Office - Supreme Court, U.S.
FILED
JUN 10 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1256

In the Supreme Court of the United States

OCTOBER TERM, 1982

DENNIS LYNCH, INDIVIDUALLY AND AS MAYOR OF THE CITY OF PAWTUCKET, RICHARD A. MUMFORD, INDIVIDUALLY AND AS FINANCE DIRECTOR FOR THE CITY OF PAWTUCKET, AND GUY DUFAULT, INDIVIDUALLY AND AS DIRECTOR OF DEPARTMENT OF PARKS AND RECREATION OF THE CITY OF PAWTUCKET, AND THE CITY OF PAWTUCKET,

PETITIONERS,

v.

DANIEL DONNELLY, GEORGE KRIEBEL, ROBERT GOODWIN, GREG FRAZIER And AMERICAN CIVIL LIBERTIES UNION, RHODE ISLAND AFFILIATE,

RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 26, 1983
CERTIORARI GRANTED APRIL 18, 1983

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

No. 82-1256

DENNIS LYNCH, ET AL.,
PETITIONERS,
v.
DANIEL DONNELLY, ET AL.,
RESPONDENTS.

Relevant Docket Entries

1980

Dec. 17 Summons and Complaint filed A Motion for a Temporary Restraining Order filed together with appearance of Sandra Blanding, attorney at law, for plaintiff.

1981

Jan. 7 Defendants' Answer filed together with appearance of Marifrances McGinn, attorney at law, for defendants.

Jan. 23 Entry of appearance of William F. McMahon, Esq. for defendants.

Feb. 3 Case goes to trial. William F. McMahon, Esq. and Sandra Blanding, attorney at law, make their opening statements. Plaintiffs' witnesses Daniel Donnelly and Steven Brown sworn, defendants' witness Guy Dufault sworn. Plaintiff Exhibits 1-7 and defendants' Exhibits A, B, C-1-7 submitted.

Feb. 5 Trial continues. Defendants' witnesses Richard Mumford and Mayor Dennis Lynch sworn and plaintiff's witnesses Dr. Michael Werle and Rev. Thomas Ramsby sworn. Plaintiff's Exhibits 8,a-g, 9, 10, 11 and 12 submitted.

Feb. 6 Trial continues. Defendants' witnesses Aaron Stoller, Dennis Moore and David Freeman sworn. Plaintiff and defendant closing arguments.

1981

Mar. 30 Transcript of proceedings on 2/3 and 2/5/81 filed by Court Reporter.

Aug. 31 Tentative Opinion of Judge Raymond Pettine dated August 31, 1981, re: ACLU has no standing to sue the City of Pawtucket. Judge Pettine gives parties ten days to file a response.

Sept. 18 Motion to Amend Complaint is filed by plaintiffs.

Oct. 15 Answer to Amended Complaint filed by defendants.

Oct. 16 Affidavits of George Kriebel, Robert Goodwin and Gregory Frazier filed by plaintiffs and order granting plaintiffs' motion to amend complaint.

Nov. 10 Opinion and Order entered and filed finding that defendant City of Pawtucket did violate the Establishment Clause of the Constitution by including a nativity scene in its Christmas display and ordering the defendant permanently enjoined from continuing this practice. Judgment entered.

Nov. 16 Defendants' Notice of Appeal filed.

Dec. 1 Record on appeal together with exhibits from hearing mailed to Clerk of the United States Court of Appeals for the First Circuit, Boston, Massachusetts.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

[CAPTION OMITTED IN PRINTING]

RELEVANT DOCKET ENTRIES

1981

Dec. 4 Motion for Stay of an Order pending appeal and memorandum together with a Motion for an expedited hearing.

1981

Dec. 10 Entry of appearance of William F. McMahon, Esq. and Marifrances McGinn, attorney at law, for appellant and entry of appearance of Sandra A. Blanding, attorney at law, and Amato A. DeLuca, Esq., for appellees.

Dec. 11 Memo & Order denying Motion for Stay.

Dec. 18 Order scheduling the case for the April 1982 session.

1982

Apr. 5 Appearance of Spencer W. Viner, Esq. for appellants received and filed.

Apr. 7 Heard on the merits by Justices Fairchild, Campbell and Bownes.

Nov. 3 Judgment affirming the District Court, opinion of the Court by Fairchild, J., concurring opinion by Bownes, J., and dissenting opinion by Campbell, J.

SUPREME COURT OF THE UNITED STATES

[CAPTION OMITTED IN PRINTING]

RELEVANT DOCKET ENTRIES

1983

Jan. 26 Petition for Certiorari filed.

Apr. 18 Order of Supreme Court granting Petition for a Writ of Certiorari.

Opinions Below

The Opinion of the Court of Appeals is contained in the Petition for Certiorari at pp. A-1 - A-20.

The Opinion of the United States District Court for the District of Rhode Island is contained in the Petition for Certiorari at pp. A-21 - A-74.

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF RHODE ISLAND

[CAPTION OMITTED IN PRINTING]

AMENDED COMPLAINT

I. JURISDICTION

1. This is a civil action brought under 42 U.S.C. §§1983 and 1988 by plaintiffs to secure a temporary and permanent mandatory injunction against the construction, maintenance, and continued display of a creche depicting the biblical birth of Christ located on Hodginson Park, on public property, and against the allocation and use of funds of the City of Pawtucket, for the support of, or to finance in whole or in part the construction, maintenance, protection, and continued display of the creche and for a declaratory judgment that such use of city funds and city property violates the First and Fourteenth Amendments to the United States Constitution.

2. This Court has jurisdiction of the matter in controversy pursuant to 28 U.S.C. §§1331, 1343, 2201, and 2202.

3. The amount in controversy and exclusive of interest and costs is in excess of Ten Thousand ($10,000.00) Dollars as more fully appears hereafter.

XI. PARTIES

4. Plaintiff, George Kriebel, is a citizen, resident, and taxpayer of the City of Pawtucket, State of Rhode Island, and of the United States, and is also a dues paying member of the American Civil Liberties Union, Rhode Island Affiliate, and regularly pays taxes which finance the operation and maintenance of city property.

5. Plaintiff, Robert Goodwin, is a citizen, resident, and taxpayer of the City of Pawtucket, State of Rhode Island, and of the United States, and is also a dues paying member of the American Civil Liberties Union, Rhode Island Affiliate, and regularly pays taxes which finance the operation and maintenance of city property.

6. Plaintiff, Greg Frazier, is a citizen, resident, and taxpayer of the State of Rhode Island, and of the United States, and regularly pays taxes which finance the operation and maintenance of city property.

7. Plaintiff, American Civil Liberties Union, Inc., Rhode Island Affiliate, is a non-profit organization, organized under and by virtue of the laws of the State of Rhode Island. The purpose of this Corporation is to protect and advance the constitutional rights of citizens of the United States and of the State of Rhode Island, including the members shared individualed right to a government that does not establish religion.

8. Defendant, Dennis Lynch, is and at all times pertinent hereto, has been the Mayor of the City of Pawtucket, and is sued individually and in that capacity.

9. That defendant, Guy Dufault, is and at all times pertinent hereto, has been the Director of the Department of Parks and Recreation of the City of Pawtucket, and is sued individually and in his official capacity.

10. Defendant, Richard A. Mumford, is Finance Director of the City of Pawtucket, and is sued in that capacity pursuant to the provisions of Rhode Island General Law §45-15-5.

III. Statement of Facts

11. The City of Pawtucket is now and at all times pertinent hereto has been the owner of certain property within the City and known as Hodginson Park, which property is leased to the Historical Society of the City of Pawtucket.

12. That the City of Pawtucket has regularly erected an annual display of a nativity scene on the property known as Hodginson Park, and the City owns, constructs, and maintains said nativity scene through the use of City of Pawtucket employees, who are employed to work on the City's Christmas display from Thanksgiving to January 1 of each year.

13. The creche or nativity scene depicts the birth of Christ, attended by his mother, Mary, St. Joseph, and other figures. Content of this display is based on the biblical descriptions of the birth of Christ. Also part of the display is a sound system on which religious Christmas music is broadcast to passersby and public.

14. To plaintiffs' information and belief, sums have been appropriated and will be expended by the defendants for the construction, erection, and maintenance of the nativity scene and the attendant sound system. This expenditure of public funds involves an excessive entanglement between government and religion, and intensifies fragmentation and divisiveness on religious lines, as well as constituting establishment of religion.

15. Defendant, Guy Dufault, as Director of the Department of Parks and Recreation of the City of Pawtucket, is responsible for supervising and directing the city employees who erect, construct, maintain, and protect said nativity scene.

16. Plaintiffs have no adequate remedy at law and will suffer irreparable harm by the continued construction, erection, maintenance, and protection of the nativity scene and attendant broadcasting of religious music by the City of Pawtucket and the defendants named herein.

17. Defendants will not be harmed by the issuance of a temporary and permanent mandatory injunction preventing the display of religious symbols and playing of religious music on city owned property, through the use of city employees and the expenditure of city tax funds.

18. Defendants are likely to succeed on the merits of their complaint, as appears more fully in the accompanying memorandum.

19. Defendants were at all times acting under color of law.

IV. First Cause of Action

20. Plaintiffs hereby incorporate paragraphs 1 through 19 above and for their first cause of action allege that the nativity scene described herein and the attendant public address system constitutes a religious symbol and that by constructing, erecting, maintaining, and protecting this nativity scene and public address system on city owned property and through the use of city employees and the expenditure of city tax funds, the defendants have violated and are continuing to violate the Establishment Clause of the First Amendment, incorporated in the Fourteenth Amendment to the United States Constitution, by sponsoring government action whose principal and primary effect is to advance religion and which has caused and continues to cause excessive government entanglement with religion.

V. Second Cause of Action

21. Plaintiffs hereby incorporate paragraphs 1 through 20 above and for their second cause of action allege that by constructing, erecting, maintaining, protecting, and sponsoring the nativity scene and attendant public address system described herein on city owned property and through the use of city employees and the expenditure of city tax funds, the defendants have created and maintained and continue to create and maintain a religious symbol evincing a religious purpose, and have thereby interferred with and continue to interfere with the rights of Plaintiffs, who are citizens and members of plaintiff organization, to the free exercise of their religion, guaranteed by the First Amendment, and incorporated in the Fourteenth Amendment of the United States Constitution.

WHEREFORE, plaintiffs pray:

1. For a declaratory judgment that the construction, erection, maintenance, and protection of the nativity scene and attendant public address system described herein on city owned property in the City of Pawtucket, and through the use of city employees and the expenditure of city tax funds violates the Establishment Clause and Free Exercise Clause of the First and Fourteenth Amendments of the United States Constitution.

2. For a mandatory injunction ordering defendants to remove and temporarily and permanently enjoining them from future construction, erection, maintenance, or protection of the nativity scene and attendant public address system on city owned property, through the use of city employees or through the expenditure of city tax funds, and further enjoining the defendants from making any further expenditures of city funds directly or indirectly in whole or in part, to construct, maintain, or protect the nativity display.

3. For an Order granting plaintiffs' reasonable attorneys' fees and costs of maintaining this action.

4. For a preliminary injunction, pending the trial of the issues, against the defendants for the relief set forth in paragraphs 1 and 2 herein.

5. For such other relief as the Court deems just and proper.

GEORGE KRIEBEL
ROBERT GOODWIN
GREG FRAZIER
STEVEN BROWN, Executive Director
American Civil Liberties Union,
Rhode Island Affiliate

That we, George Kriebel, Robert Goodwin, Greg Frazier, and Steven Brown, in his capacity as Executive Director of the American Civil Liberties Union, Inc., Rhode Island Affiliate, first being duly sworn, on oath, depose and say that we have read the foregoing complaint and that it is true to the best of our knowledge and belief.

GEORGE KRIEBEL
ROBERT GOODWIN
GREG FRAZIER
STEVEN BROWN, Executive Director
American Civil Liberties Union,
Rhode Island Affiliate

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ANSWER TO AMENDED COMPLAINT

I. JURISDICTION

1. The Defendants are without knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 and leave Plaintiffs to their proof thereof.

2. The Defendants admit the allegations set forth in Paragraph 2.

3. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 and leave Plaintiffs to their proof thereof.

II. PARTIES

4. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 and leave Plaintiffs to their proof thereof.

5. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 and leave Plaintiffs to their proof thereof.

6. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 and leave Plaintiffs to their proof thereof.

7. The Defendants admit the allegation set forth in Paragraph 7.

8. The Defendants admit the allegations set forth in Paragraph 8 except that on or about July 13, 1981, Dennis M. Lynch resigned as Mayor and William F. Harty, Jr. became and as of the date hereof is Mayor of the City of Pawtucket.

9. The Defendants admit the allegation set forth in Paragraph 9.

10. The Defendants admit the allegation set forth in Paragraph 10.

III. Statement of Facts

11. The Defendants deny the allegations set forth in Paragraph 11.

12. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 and leave Plaintiffs to their proof thereof.

13. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 and leave Plaintiffs to their proof thereof.

14. The Defendants deny the allegations set forth in Paragraph 14.

15. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 and leave Plaintiffs to their proof thereof.

16. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 and leave Plaintiffs to their proof thereof.

17. The Defendants deny the allegations set forth in Paragraph 17.

18. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 and leave Plaintiffs to their proof thereof.

19. The Defendants admit the allegation set forth in Paragraph 19.

IV. First Cause of Action

20. The Defendants hereby incorporate by reference their answers to Paragraphs 1 through 19 inclusive which the Plaintiffs have incorporated by reference and deny the allegations set forth in Paragraph 20.

V. Second Cause of Action

21. The Defendants hereby incorporate by reference their answers to Paragraphs 1 through 20 inclusive which the Plaintiffs have incorporated by reference and deny the allegations set forth in Paragraph 21.

By their Attorney,

William F. McMahon
742 Howard Building
Providence, RI 02903
Attorney for Defendants

[Certification Omitted in Printing]

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF RHODE ISLAND

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STENOGRAPHIC TRANSCRIPT OF TRIAL

[6] DANIEL DONNELLY,

having been first duly sworn, testified as follows:

Direct Examination By Miss Blanding

• • •

[9] MISS BLANDING: I'd ask that these be marked.

THE COURT: Any objection to the introduction?

MR. McMAHON: No objection.

THE COURT: No objection, they may be marked as a full exhibit. May I see them, please.

(Photographs handed to Court.)

(Eight photographs marked Plaintiff's Exhibit 1.)

Q. Mr. Donnelly, would you describe approximately how large the nativity scene that you saw in Hodgson Park and is represented in those pictures is? A. There were approximately twelve to fourteen statues and a small manger that comprises the nativity scene. The statues ranged from two feet to four feet and the manger was about five feet high and inside there was straw with a statue of the baby lying inside the manger.

Q. Was there also a stable or building around it? A. Yes, it wasn't a complete building, it was a set of boards that outlined the shape of a barn or some kind of manger.

Q. And what did that nativity scene represent to you?

MR. McMAHON: Objection, Your Honor.

THE COURT: No, overruled.

[10] A. It represented a religious display which depicted the birth of Christ.

Q. Where could you see the scene from or where did you see it from? A. I saw it while walking, I forget the name of

the street, but the street the City Hall is on, walking along that street doing Christmas shopping and I had paid particular note to it and I had also observed it from inside the park itself.

Q. And did you know that it was sponsored by the city of Pawtucket?

MR. McMAHON: Objection.

THE COURT: Well, he can answer that yes or no, did he know.

A. Yes.

Q. When you first saw this nativity scene what reaction, if any, did you have toward it?

MR. McMAHON: Objection, Your Honor.

THE COURT: Well, Mr. McMahon, it does seem to me that that's admissible evidence because one of the issues in this case is the question of devisiveness as to the reaction it has on the citizens themselves and so that the subjective aspect is admissible evidence as I see it. I feel constrained to overrule your objection. All right, go ahead.

[11] A. My initial reaction was one of fear, I was frightened by the nativity scene.

Q. Why were you frightened of it? A. Because of recent events on national and state levels, I've been very concerned that various religious groups are becoming more and more politicized and are exerting and trying to impose their views on the larger society and to me the nativity scene at that time represented a concrete example of that.

Q. A concrete example of what, I'm sorry, I didn't follow you. A. A concrete example of the power of religious groups to have their artifacts displayed by the city.

Q. And what if any—okay—you say that you were afraid because of recent events where religious groups had become politicized and you felt that the nativity scene was an example of that. A. Yes.

Q. What, if any, relationship do you feel that that had to the city of Pawtucket's erecting this nativity scene? A. I'm

sorry, I don't believe I understand the question.

Q. Did you have a feeling or opinion as to the city's purpose in erecting the scene?

MR. McMAHON: Objection, Your Honor, that's a conclusion of law.

MISS BLANDING: Your Honor, I believe that the witness's—

THE COURT: I haven't ruled yet.

MISS BLANDING: I'm sorry.

THE COURT: At least as to whether or not he had a feeling, the affirmative or the negative, can be placed on the record. He may not have any feeling and that would be the end of it so let's find out.

THE WITNESS: I felt that that represented—

THE COURT: No, no, you just answer yes or no. Read the question back to the witness.

(Previous question read back.)

A. Yes, I did.

Q. And what was that feeling?

MR. McMAHON: Objection, Your Honor.

THE COURT: Yes, that must be sustained. He can give us his subjective reaction to it but how does he know what the city's purpose was.

MISS BLANDING: Your Honor, I'm not asking him to answer what objectively was the city's purpose, I'm asking him to answer what he perceived the city's purpose to be and I believe—

THE COURT: Well, frame it that way and I will allow the question.

Q. What did you perceive the city's purpose to be in [13] erecting the nativity scene? A. I perceived that the city—

MR. McMAHON: Objection, Your Honor.

THE COURT: Overruled.

A. I perceived that the city was demonstrating its support for a particular religious viewpoint.

Q. And what, if any, feeling do you have about that?

MR. McMAHON: Objection, Your Honor.

THE COURT: Overruled.

A. I feel that no municipality should demonstrate support for any religious viewpoint.

Q. Why do you feel that way?

MR. McMAHON: Objection to this line, Your Honor.

THE COURT: Yes, I understand, I'll overrule it.

A. I felt that way because I strongly believe in a separation of church and state.

Q. As a result of your feelings that church and state should be separate and that the city's erection of a nativity scene is supportive of religious beliefs did you have a feeling as to whether or not your interest in the separation of church and state had been injured in any way?

MR. McMAHON: Objection, Your Honor.

[14] THE COURT: Subjective reaction is admissible, I'll allow it.

A. Yes, I did.

MISS BLANDING: I have no further questions, Your Honor.

Cross Examination By Mr. McMahon

XQ. (By Mr. McMahon) Mr. Donnelly, the first tax bill you received from the city of Pawtucket was for the year 1977, is that correct? A. I believe so, I'm not positive.

XQ. You never paid that bill, isn't that correct?

MISS BLANDING: Objection.

THE COURT: Overruled.

A. There is one tax bill that I have outstanding with the city of Pawtucket because of a situation that I've been trying to straighten out regarding the car that was registered in my name but that I don't actually own.

THE COURT: That doesn't answer the question that was asked of you by Mr. McMahon. He said the first tax bill you received was for 1977 followed by the inquiry as to whether or not you paid that bill.

THE WITNESS: No, I did not I don't believe.

XQ. Now another bill was sent to you for the year 1978, is that correct? A. Yes, sir.

• • •

[23] Defendant's Exhibit B, that's correct, is it not? A. A small portion of the nativity scene is.

THE COURT: May I see that, please.

(Exhibit B handed to Court.)

THE COURT: Would you kindly point out to me—oh, I think I see it, it's sort of in back of the tree, is that what you mean?

MR. McMAHON: Immediately to the right, it merges into it, Your Honor.

THE COURT: Is that where you mean?

MR. McMAHON: Yes.

THE COURT: Okay, thank you.

XQ. Now Mr. Donnelly, the Christmas display includes a Santa Claus and reindeer closely behind and arising above the nativity scene, is that not correct?

MR. DeLUCA: Objection, Your Honor.

THE COURT: No, overruled. Now you said includes a Santa Claus and reindeer and how did you describe that, that rises?

MR. McMAHON: I'll withdraw and define it more specifically, Your Honor.

THE COURT: All right, re-phrase it then.

XQ. Mr. Donnelly, between the nativity scene and westerly river wall of the Blackstone River there is a Santa Claus and reindeer which rises higher than the nativity [24] scene, is that not correct? A. Yes, it is correct.

XQ. Do you object to that portion of the Christmas display on the ground of its religious content? A. The Santa Claus and reindeer, no, I don't.

XQ. Now to the southwest of the nativity scene by a matter of fifteen to twenty feet there is a very large Christmas tree, is there not? A. Yes, there is.

XQ. Do you object to that as a religious symbol? A. No, I don't.

XQ. And there is a wishing well nearby, is there not, which is part of the Christmas display? A. I don't recollect a wishing well.

XQ. Now with respect to the Christmas display itself—strike that—with respect to the nativity scene itself there are small figurines of animals in that scene, are there not? A. Yes, there are.

XQ. Do you object to the figures of those animals as religious symbols? A. Yes, I do, because they're part of the scene that depicts a specific religious event. As to themselves I don't find animals to be, those animals to be religious but because of what they're part of I do.

[23] XQ. In other words, it's your testimony that the symbolism depends upon what the symbol is a part of, is that your testimony? A. It depends upon the entire context of what's being symbolized, not the individual pieces that make up that scene.

• • •

[36] STEVEN BROWN,
having affirmed, testified as follows:

Direct Examination By Miss Blanding

• • •

Q. Mr. Brown, did you ever see the Christmas display and the nativity scene that's the subject of this complaint? A. Yes, I did.

Q. When did you see it? A. Shortly after I received the information I went and visited it twice.

Q. And that was in December of 1980? A. That's correct.

Q. And what was your feeling upon seeing it?

MR. McMAHON: Objection, Your Honor.

THE COURT: It seems to me that must be admitted, Mr. McMahon, that's one of the questions, what reaction it has on the public. I will allow the question, go ahead.

A. I was offended by it. I was also upset that the city was sponsoring a display of that sort.

Q. Why were you offended by it?

MR. McMAHON: Objection, Your Honor.

THE COURT: Overruled.

A. I was offended for a number of reasons. I believe very strongly in the principle behind the First Amendment which I consider to be that of separation of church and state. I do not believe the government has any business involving itself in religion. I think it's important both from the point of view of the citizen [44] of the state or of the country as well as from a person who is concerned about religious strength. I don't believe that either the government or religion is served when the two of them get involved in joint ventures such as this.

Q. So that you perceived the nativity scene as a joint venture, is that what you're saying? A. That's right, I perceived it as the government sponsoring and supporting a particular religious viewpoint.

Q. When you see a nativity scene such as the one in the Pawtucket display what significance does that have to you?

MR. McMAHON: Your Honor, in order to save time will the Court please give me a line objection to subjective impressions about the display?

THE COURT: Certainly.

A. It signifies the birth of Christ.

Q. And does the birth of Christ have a significance to you? A. It has a religious significance to me, yes.

Q. Besides the initial complaint you received regarding the Pawtucket nativity scene, have you as Executive Director of the ACLU personal knowledge of any expressions of public feelings or sentiments towards the city's display?

[45] MR. McMAHON: Objection.

THE COURT: He may answer that just yes or no. You realize that you might be entering into the field of hearsay evidence if you're going to ask him to repeat what he's been told.

MISS BLANDING: Your Honor, I was going to ask him the substance of those complaints and I believe that that comes under an exception to the hearsay rule as a, an expression of feeling or state of mind which is an exception whether the declarant is available or not available.

THE COURT: You want to argue the point?

MR. McMAHON: Oh, certainly, Your Honor. I know of no such exception. This man is an employee of a corporation, if he can relate verbal expressions made to him that an employee of any corporation can testify as to hearsay on any subject in which the corporation happens to have an interest.

THE COURT: Well, do you want to argue this further? I notice you were trying to find, you're looking for Rule 803?

MISS BLANDING: 803(3), Your Honor.

THE COURT: I know that's what you're looking for and I opened it up to 803(3).

MISS BLANDING: Your Honor, we would attempt, [46] and this goes to other things that we will attempt to offer, we believe that one of the very important aspects of this case is the divisiveness which has come up as a result of this controversy and that the potential for divisiveness is obviously one of the important factors in the entanglement aspect of the establishment test. Now, I believe that the exception to the hearsay rule regarding a statement of present emotional and mental condition is grounded on the fact that a person stating their present feelings about something is not apt to be, is apt to be telling

the truth, and there are many, there have been many indications to both Mr. Brown and I believe from press reports to Mayor Lynch, and there have been many letters to the editor in the paper regarding people expressing their feelings. Now to get every single one of those people, especially at least of those that we knew the names of, into court to testify that this is how they feel and this is their sentiment when they see the scene will take just an enormous amount of time obviously.
amount of time obviously.

THE COURT: Complete all your arguments before I rule, go ahead.

MR. McMAHON: Your Honor, Miss Blanding has used the word "feeling," what it really is legally is opinion, it's not only hearsay but it's hearsay opinion.

[47] THE COURT: Okay, now the way I interpret what you are attempting to do is to elicit from this witness what impressions he has gotten from calls that he has received or letters that he has received. I assume that what you're trying to do is to show that there is a segment of the public that is opposed to a government sponsored nativity scene and that these protests, if they were such, came immediately following his view of the scene, and came at the time while it was erected and being displayed. The object being to show divisiveness, do I have the right focus on your objectives?

MISS BLANDING: Yes, Your Honor.

THE COURT: All right, now if I have that right focus on your objectives then any statement that this man might make which explains his impressions which he perceived from statements which describe the particular event which are made at the time or immediately thereafter is admissible evidence under 803(1) and they're not introducing these statements for the truth of what they contain but the fact that they were made to him from which he got a general impression of the pulse of the community at that time, at least as to those

people who are part of the community represented by those people who contacted him. I will [48] allow the question.

MISS BLANDING: Thank you, Your Honor. May I ask that the question be read back.

THE COURT: Did you get an impression from all that you heard is the focus here.

THE WITNESS: Yes.

THE COURT: All right and then on what did you base this impression?

THE WITNESS: It was based on the statements that were made to me.

THE COURT: And I suppose the next question is what impression did you get?

THE WITNESS: That there were many people in the community in the state and in Pawtucket who disagreed with our decision to take this case and felt that the city did have a right to sponsor and support the religious views of the majority.

Q. When you say the impression that you got was that the people felt that the city had the right to sponsor the religious views of the majority— A. Yes.

Q. Is that correct? A. Yes.

Q. So is the impression you got from the communications you received that the people who were calling you [49] believed or felt that that is what the city was doing, supporting religious views? A. Absolutely.

Q. And approximately how many of these communications did you receive?

MR. McMAHON: Objection.

THE COURT: Overruled.

Q. Well, in the office I'd say I received about 75 phone calls of various kinds. There were some, of course, that supported our position, most of them were opposed and gave the viewpoint that I expressed earlier. I also appeared on a three hour radio talk show in mid December where again the overwhelm-

ing majority of callers to the talk show expressed that viewpoint.

Q. I show you these and ask you if you can identify them? A. Yes, these are letters to the editor that appeared in the Providence Journal and the Pawtucket Evening Times during the time the lawsuit was filed.

Q. Did you cut these letters out? A. Yes, I did.

Q. Did you make a point to look for them? A. Yes, I did.

Q. And there is handwriting on them with dates, is that your handwriting? A. Yes.

[50] Q. And that would be the dates the letters appeared? A. That is correct.

(Pause)

THE COURT: I think I should also further place on the record here that this also comes under the exception, I think it's 24, is it, the very last exception, 24, right, "Other Exceptions," which is a sweeping exception to overcome the hearsay rule. I checked it to make sure that my memory wasn't playing tricks on me but the pre-trial memoranda which the plaintiffs filed, and I assume that counsel received a copy of this memorandum, specifically states that what they intend to introduce were photographs of the city of Pawtucket's Christmas display, newspaper articles regarding the instant action appearing, editorials and newspaper articles appearing in the Pawtucket Times and that certainly put the defendant on sufficient notice as required by Section 24 which does additionally stamp this kind of evidence with admissibility. All right, go forward.

MISS BLANDING: I would ask that they be marked.

MR. McMAHON: I'm going to object, Your Honor.

THE COURT: And I'm going to allow them to be marked, I feel for the reasons that I stated—yes.

[51] MR. McMAHON: Excuse me, Your Honor, I believe this raises another question, the question we haven't discussed. The documents being introduced show a public impression to this lawsuit, not to the display, this lawsuit, and the evidence

apparently being introduced is that it's this lawsuit that's divisive. Now I suggest that raises an altogether different question.

THE COURT: Well, that goes to the weight of the evidence as to the purposes for which it's being introduced. All right, they may be marked.

CLERK ZINNI: For identification, Your Honor, or as full exhibits?

THE COURT: Full exhibits and I place an exception on the record for defense.

(Letters marked Plaintiff's Exhibit 4.)

MISS BLANDING: I have no further questions of this witness, Your Honor.

Cross Examination By Mr. McMahon

• • •

[53] XQ. Now Mr. Brown, you said that the nativity scene has a religious significance to you personally, isn't that correct? A. Yes, it does.

XQ. Would you describe for the Court what your personal background or familiarity with religion is in terms of education and affiliation? A. I'm Jewish.

XQ. Will you please describe for the Court what, if any, religious training you had in the education in the Jewish faith? A. I went to Hebrew school for approximately ten years.

XQ. What ages, Mr. Brown? A. I'd say from approximately 6 to 16, 5 to 15, around there, I'm not sure.

XQ. Now does the Madonna have a religious significance to you? A. Yes, it does.

XQ. Does the Christmas tree have a religious significance? A. No, it doesn't.

XQ. Do figurines of sheep and other animals have a religious significance to you? A. When viewed in the context of a nativity scene display [54] they certainly do.

XQ. So that you say that the significance of a symbol must be viewed in context, is that correct, that's your testimony, isn't it? A. Oh, I'd say the nativity scene is one symbol in and of itself.

XQ. In other words, as I understand your testimony you're saying that the components of the nativity scene must be considered in context, correct? A. I'm saying that a nativity scene is one thing in and of itself in that it doesn't make sense to try to break it down as you're trying to do.

XQ. Well, I'd like my question to be answered—your testimony is, is it not, that each component of the nativity scene must be viewed in context, isn't that your testimony?

MR. DeLUCA: I object.

THE COURT: Overruled.

A. I don't believe so, I'm simply saying you're right that there is nothing religiously significant in and of itself of a particular animal. That is correct, I will agree to that.

XQ. And there is nothing of a religious significance in and of itself of a wooden crypt held up by hockey sticks, isn't that correct? [55] A. That's probably true.

XQ. And there's no religious significance in and of itself of individuals dispicted as kings or royalty people with crowns on their heads, isn't that correct? A. There is nothing religiously significant about kings in and of themselves, that's true.

XQ. Now there also, figurines representing a male figure, presumably a father, and a female figure, presumably a mother, correct? A. Yes.

XQ. Now in and of themselves they have no religious significance, is that correct? A. In and of themselves the figure of a father and mother do not have religious significance, that is correct.

XQ. So your tesitmony is that the religious significance is derived from all of these elements in context, isn't that a fair statement of your testimony? A. When all the elements, when they are all put together as a nativity scene display, that is correct.

XQ. Okay, now is it also true that in the nativity scene, as part of a secular display, must also be viewed in context, isn't that a fair statement too? A. No, not necessarily.

XQ. So your testimony is that the elements of the nativity scene must be taken in combination but that the [56] nativity scene is not to be taken in combination with other elements of the display, is that your testimony? A. Well, no, it's not that the elements of the nativity scene must be taken in combination, it's that one, one of those symbols in and of themselves are not necessarily religious but when more and more are added together they certainly do become a religious message and that's not changed by the fact that it may be surrounded by other displays that are not necessarily religious. It still is a religious display.

XQ. Well, isn't it true that the kings in the nativity scene are symbolic of giving, they're there with gifts, aren't they? A. Yes, they are.

XQ. They're symbols of giving, isn't that a fair statement? A. I can't say for sure, I'm not an expert on that.

XQ. Well, is it your understanding of the functions of kings in a nativity scene? A. Well, as I understand, again I'm not, I cannot speak as an expert but as I understand they are there to witness the birth of Christ who has a very significant meaning for the Christian religion.

XQ. And significance to you as a member of the Jewish religion of a different sort from— A. That's correct, yes.

[57] XQ. You view this in the light of your whole religious orientation, isn't that correct? A. I would view it in a number of ways including that, yes.

MR. McMAHON: Your Honor, at this point, without hoping not to impose too much on the time of the Court, I would like to confer.

(Pause)

XQ. Mr. Brown, isn't it true that the Jewish religion acknowledges the birth of Christ as a historical fact? A. Anybody must acknowledge that as a historical fact.

XQ. That has nothing to do, that is separate and apart from any religious significance it might have, correct? A. Well, insofar as anybody is born it is an historical fact.

* * *

[61] XQ. So that if there were court of appeals, Federal Court of Appeals decision that said that they may be so displayed then that would be contrary to your views of separation of church and state, isn't that correct?

MR. DeLUCA: Objection.

THE COURT: Yes, that's sustained. This Court will decide what the prevailing authority is.

MR. McMAHON: I'm attempting, Your Honor, to show his personal views are views on questions of law.

THE COURT: Well, you can't attribute to him questions of law, sustained.

MR. McMAHON: No further questions, Your Honor.

THE COURT: Anything further?

Re-Direct Examination By Miss Blanding

Q. (By Miss Blanding) Mr. Brown, I believe you indicated on cross examination that some of the individuals who called you and expressed their viewpoints about the nativity scene and about this suit expressed a viewpoint of the ACLU is perceiving a trivial matter, is that correct? A. That's correct.

Q. Is your impression from what these people told you and their expressions of their opinion, would you say that the general tenor is that this is, that this was a trivial matter to them? [62] A. No, I think the amount and kind of communications we received belie that.

Q. Okay, now you testified as to the nativity scene and its completeness in itself and also as to various figures in the scene? A. Yes.

Q. Would you say that an angel has religious significance? A. Yes, I would.

Q. Were there angels in the nativity scene? A. Yes, there were.

Q. Would you say that figures kneeling in a posture of adoration had a religious significance? A. They could, yes.

Q. And were there figures in that posture in the nativity scene? A. I believe so, yes.

Q. And all of these figures in the scene taken as a whole, I believe you said they had to be taken in combination? A. Yes.

Q. What do you see them as depicting taken in combination?

MR. McMAHON: Objection.

THE COURT: We kind of went through that on direct, Consellor.

MISS BLANDING: Okay, Your Honor.

Q. Let me re-phrase that; I believe Mr. McMahon said to [63] you that, asked you if you testified that the elements must be taken in combination and he related that to the whole Christmas display, is that right? A. I believe so.

Q. And am I right that you indicated that you viewed the nativity scene as a whole but not the Christmas display as a whole, is that right? A. That is correct.

Q. Why do you view those two aspects differently? A. I consider the nativity scene display clearly a religious symbol unlike the other aspects of the display like reindeer and wishing wells and everything else.

Q. Now you also indicated that you viewed the birth of Christ as an historical fact, is that right? A. Yes, it is.

Q. Do you view the nativity scene and what it signifies to you as a historical fact?

MR. McMAHON: Objection.

THE COURT: Overruled.

A. I have, no, I do not. I do not view it as a historical fact.

Q. Mr. Brown, the communications you received from people that you've already testified to and the telephone calls and the letters that you put out, did the views people expressed in those pertain to the nativity scene [64] or the suit or both?

Mr. McMahon: Objection.

The Court: No, he was asked on cross was it not a fact that they objected to the lawsuit. Go ahead, overruled.

A. Both. There were objections that we had filed the lawsuit and also the opinion expressed that the city had a right and the people had a right to have the city sponsor and put up a nativity scene display.

Miss Blanding: I have no further questions, Your Honor.

The Court: Anything further, Mr. McMahon?

Mr. McMahon: No, Your Honor.

(Witness excused.)

GUY DUFAULT

having been first duly sworn, testified as follows:

Examination By Miss Blanding

Q. (By Miss Blanding) Mr. Dufault, are you employed by the City of Pawtucket? A. Yes.

Q. And in what capacity are you employed? A. Director of Parks and Recreation.

Q. How long have you been the director of Parks and Recreation? A. Since April 7, 1980.

[65] Q. What are your duties as the Director? A. I have the development, maintenance and operation and programs for all of the city's park system and their recreational activities.

Q. As the Director of Parks and Recreation do you supervise or become involved in any way with the erection of the Christmas display? A. Yes.

Q. By the city? A. Yes.

Q. And what is the extent of your involvement? A. I would give directives to maintenance staff to erect and also take down that particular display. I would also contact or make initial contact with the vendors as to the different type of things that we would need.

Q. To purchase you mean? A. Yes.

Q. And did you become so involved in the display that was put up in 1980? A. Yes.

Q. And when was that display erected? A. The actual erection started approximately the first week in November and concluded on December 5th.

Q. And that display included the display we've been talking about in Hodginson Park? [66] A. Yes.

Q. And the nativity set which is a part of that display? A. Yes.

Q. Who designed the layout of the display in Hodginson Park? A. The maintenance supervisor to, who's a foreman under my direction.

Q. And did you finally approve that? A. Yes.

Q. And are the individuals who were employed to erect the display under your supervision? A. Yes.

Q. How many individuals were employed in erecting that display in Hodginson Park? A. It varied at different times, I would say up to 20 different individuals were involved.

Q. When you say up to 20 individuals I'm not sure what you mean. A. Certain days certain individuals, depending on the priorities of the day, would be shifted to other portions of the city to work on parks and recreation type of facilities. Certain individuals have a particular expertise such as the electrician would be doing the electrical work when we had the lights working, carpenters would be erecting certain parts of [67] Santa's stand, that type of thing.

Q. Do you know how many hours or how many people went into the erection of the nativity set? A. I have that ex-

actly. For the set up and breakdown of the display we had approximately 600 hours of total service.

Q. Are you referring to the entire Christmas display in Hodginson Park, is that right? A. As well as City Hall, the ice rink and the carousel where we also have displays put up.

Q. Do you know how many city employees worked on the nativity scene itself? A. It would take approximately, I don't know which of the particular individuals did do that, it takes two individuals about an hour to set it up.

Q. Okay, where is the nativity scene stored?

THE COURT: I'm not too sure I have this clearly in mind. When you were speaking of the 20 men you were talking of all of the Christmas displays, am I correct, Mr. Dufault?

THE WITNESS: Yes.

THE COURT: Focussing just on the Christmas display in Hodginson Park can you tell me just about, focussing on the nativity scene itself can you tell me about how many hours of the total service went into that [68] erecting and breaking it down?

THE WITNESS: Approximately two hours.

THE COURT: All right, thank you.

Q. Mr. Dufault, you're referring to setting up the figures themselves? A. Yes, and breaking it down.

Q. Okay, how about erecting the stable or the building? A. That includes the stable, it's a prefab building.

Q. And where are those figures and that stable stored? A. At the present time at the Oak Hill tennis court facility in the cellar of that building.

Q. Okay, and how far is that from Hodginson Park? A. Three minutes, five minutes.

Q. And do city workers take the display out of storage and bring it over to Hodginson Park? A. Yes, they do.

THE COURT: Let me ask one question: You say it takes about a couple of hours to put it up and a couple of hours—

THE WITNESS: No, it takes about an hour to put it up and an hour to take it down.

THE COURT: And an hour to take it down—can you tell me how many men it usually involved in doing that?

THE WITNESS: Two usually, they would go over [69] in a truck to Oak Hill, pick it up and bring it down, set up the figurines. The building itself has three different panels that fold out and then they just sprinkle hay around the display itself.

THE COURT: Thank you very much.

Q. And do you know how long it took the maintenance supervisor to design the layout of that display? A. I really can't say that because the display moved from Slater Park in 1972 and they had set up a formula or a format for that. I'm sure they followed that same particular format as they have in previous years so I can't really give you an honest answer as to what it was when they originally laid it out in 1973.

Q. And there is lighting on the nativity scene also, is there not? A. Yes.

Q. And who sets up the lighting? A. The electrician would as a member of my staff.

Q. And he's a city employee? A. Yes.

THE COURT: How much time does it usually take him?

THE WITNESS: It's very difficult to say, Judge, because of the fact that he runs all of the electrical wires together for all of the various [70] different elements that are involved such as the lighting for the trees and we also put spotlights on Santa Claus and the reindeers and we have a talking wishing well which all have electricity so it's very difficult to pinpoint the exact amount of time that he would use for that particular portion. It happens to be two spotlights and there are twelve spotlights within the display as well as the lighting that goes on both sides of the river which encompasses, I would say, total electrician's time would be somewhere around 40 hours for the entire display with the bulk of that being in the lighting of the Christmas trees themselves. It's very time consuming.

THE COURT: In other words, out of twelve spotlights two focus on the nativity scene?

THE WITNESS: Yes.

THE COURT: And that's the extent of his work.

THE WITNESS: Yes.

Q. Has the city done any maintenance work on the nativity scene? A. No, outside of the fact that the building was crumbling and we did support it with some sticks, hockey sticks.

Q. Does the city own the nativity scene? A. Yes.

Q. Now you were asked to bring with you certain records [71] today, the originals of any and all documents, reports, correspondence, memorandum, records or other writings concerning or relating to the production, ownership, erection, storage, maintenance, dismantling, support or design of the Christmas display including the nativity scene, did you bring those records with you? A. I believe those records, you have them already as part of the total package that we gave. Anything that we would have on that would be from the Finance Department.

Q. And that was going to be my next question, so all the records that were produced were not in your possession but were in the possession of the Finance Department, is that right? A. That's a true statement.

THE COURT: Did I understand you to say that this nativity scene has not required maintenance such as painting or repairing or anything of that kind?

THE WITNESS: That is definitely true.

THE COURT: For how many years would you say that's been true?

THE WITNESS: Since it was purchased in 1973. This particular set was purchased in '73.

THE COURT: Okay.

Q. Do city workers also—

THE COURT: May I, I just want to be precise, [72] do you know what the cost was to purchase this nativity scene?

THE WITNESS: Yes, I do. The nativity scene was purchased on September 26, 1973 at a cost of $1,365.

THE COURT: September 26, 197—

THE WITNESS: 1973.

THE COURT: And how much was it?

THE WITNESS: $1,365.

THE COURT: $1,365, all right, thank you very much.

Q. Now, is the Christmas display and the nativity scene lit in the evenings? A. Yes.

Q. During what hours is it lit? A. It's on a timer system, it would basically go on sometime around 5:15 and would go off at approximately 10:30.

Q. Do you know who pays for the electricity? A. The Old Slater Mill Association receives a bill, the City of Pawtucket pays the difference in that particular bill as to what it was before we went down there. If I can clarify that further; before we went to Hodginson Park they had a certain amount of money on their electric bill, when we went into the park the [73] difference in the price, because of the fact that we were having a display that featured electrical type of equipment, we have picked up the difference, the City of Pawtucket has done that.

Q. And when is the display dismantled? A. Usually the day after New Year's we would start to dismantle it.

Q. Is that when it was dismantled this year? A. No.

Q. When was it dismantled this year? A. We started the Monday after because New Year's fell on a Thursday, we did not start on Friday and we started taking some portions of it down on that Monday.

Q. And when was the nativity scene dismantled? A. I'm not exactly sure.

Q. Don't you supervise the people that do it? A. I do not get out into the field to that extent, no.

Q. How do you know that it takes two people an hour to put it up? A. Because I asked my foreman about that.

Q. And what responsibility does your foreman have towards this? A. He's the person who's directly on site in charge of the set-up out there.

Q. What's his name? [74] A. Robert Schrum.

Q. And it was dismantled by city employees also, correct? A. Yes.

Q. Mr. Dufault, do you have any time records that would indicate how much time your employees spent on various aspects of the display? A. No, we have a total time sheet of all their working activities for the week and that would be used as a mode for payment, pay roll payment.

Q. Do you know if any overtime work was put in on the display? A. I know of two particular areas of overtime that were generally directed to the display, yes.

Q. And what were those? A. One was a parks and recreation employee who posed as Santa Claus to pass out candy to the children, he did have overtime paid to him, he is normally a zoo attendant, and also to a parks and recreation employee who played a clown during our carousel display. And what her purpose was was to keep the children happy while they were waiting for Santa Claus to pass out the candy.

Q. What arrangement does the city have with the owners of Hodginson Park to use that park for a Christmas display? A. Well, our arrangement, as you know they have given us [75] permission to go on to the land, it is strictly a verbal one, there is no written communication per se. What we do normally and the procedure I followed this year in setting it up was to set up a meeting with the Mayor's administrative aide and the Mayor to find out exactly what timetable we would use as far as setting up the display, and such time as they gave me a directive timewise to put up and then communicated with both Slater Mill Association to tell them we would be going on the property at such and such a time to start the actual erection of the display.

Q. You have no written agreement to your knowledge? A. No.

Q. The city with Slater Mill? A. There is none to my knowledge.

Q. And do you know if there's any agreement as to who would be liable if someone was injured while viewing the display? A. I don't know the answer to that question.

(Pause)

THE WITNESS: It seems to be the purchase office that we would normally use for the purpose for purchasing of, something that we would buy, in particular in this case it's the nativity scene and the animals for the nativity scene.

[76] Q. These purchase orders, the prices which you gave the Court for the nativity scene came from? A. I'll tell you in a second when I check the purchase order numbers and we'll see.

(Pause)

THE WITNESS: Yes, it is.

THE COURT: Do those purchase orders, Mr. Dufault, in any way modify your answer that it cost $1,365 in 1973 and that's what the city paid?

THE WITNESS: Unless my addition is wrong, Your Honor, I would stand by that.

THE COURT: In other words, that's included in what you told me.

THE WITNESS: That is what I told you, the 1,365.

MR. McMAHON: That is correct, Your Honor, there's an item on here for garland which presumably has nothing to do with—

MISS BLANDING: I'd like these marked, please, as Plaintiff's Exhibit 5.

THE COURT: Are all those purchase orders part of the $1,365, Counsellor?

MISS BLANDING: No, Your Honor, those are just purchase orders.

MR. McMAHON: Excuse me, Your Honor, I believe [77] there are copies there, could we substitute copies for originals?

THE COURT: Any objection to doing that?

MISS BLANDING: No.

THE COURT: Certainly, withdraw them at the recess and put the copies in.

MR. McMAHON: Fine, Your Honor.

Q. I'd like to just clarify something. There are two separate purchase orders in Plaintiff's Exhibit 5, one of them says "life size nativity scene to include manger and fencing only, animals not included" and this says "animals for nativity scene." Those two purchase orders are both for the nativity scene, is that right? A. Yes.

Q. I'm going to ask you if you can identify these, not the specific items on them, what these are? A. Okay, they all have the 355 account number—these are all purchase orders that were made under the 355 line item which were within our budget code is for the Christmas celebration.

Q. If purchases were made regarding the Christmas display would you have knowledge of what those purchases were for? A. Yes.

MISS BLANDING: I would ask that they be [78] marked for identification in order that I may question the witness on them.

THE COURT: For identification they can, of course, be marked. My question to you is that if none of those invoices represent purchases for the nativity scene itself then why are you introducing them?

MISS BLANDING: Your Honor, that's precisely why I want them marked because I can't tell from some of them.

THE COURT: Well, all right, fine, then we'll mark them for identification.

THE CLERK: Plaintiff's Exhibit 7.

(Plaintiff's Exhibit 7 marked for identification.)

Q. Mr. Dufault, I would show you an invoice for spotlight holders, would you tell me whether those spotlight holders were used? A. Those were for the twelve spotlights that were at the display at Hodginson Park.

Q. That would include the two that were used for the nativity scene? A. Yes.

THE COURT: Can you hear, Counsellor, all right, Mr. McMahon?

MR. McMAHON: I can at the moment, Your Honor; [79] if I can't I'll let you know. If I can, Your Honor, I think anyone can.

THE COURT: Well, okay, I'm not far behind so go ahead.

Q. I would show you an invoice dated December 26, 1979 for spotlight bulbs, 100 watt less 40 percent, ask you what those bulbs were used for? A. I would assume they would be for the spotlights that we would have at the various different Christmas displays.

Q. And that would include the nativity scene display? A. At least two of them, yes.

Q. I would show you another invoice dated December 15, 1978, for stakes required for the Christmas display and lists a number of 10 watt bulbs, also spotlight holders and floodlight bulbs 150 watts and friction tape, would any of those be used for the nativity display? A. I was not the director at the time of these, I would assume from reading this display, I would assume that they were used for the Christmas display per se but I really can't say because I wasn't present at that time.

Q. When did you begin working in the department? A. April 7, 1980.

Q. Before that you were not employed at all in the [80] Department of Recreations? A. For the City of Pawtucket, that's right.

Q. Now I believe you testified that the electrical work in stringing electrical lights was all done by city employees on the Christmas display, is that right? A. The electrical lights themselves?

Q. Putting up the electrical light system. A. Yes.

Q. That was done by city employees? A. Yes.

Q. Do you know if that was also the case in prior years? A. I cannot say that, I'm not sure.

MISS BLANDING: I would ask that the two invoices which the witness testified were related to spotlight holders and spotlight bulbs used for the entire Christmas display including the nativity scene be admitted as a full exhibit.

MR. McMAHON: Well, Your Honor, if I heard the testimony correctly it was in part, I think, of course, I object to it going in piecemeal, I think it should all go in, but I won't object to this.

THE COURT: Mark it as a full exhibit.

(Invoices marked Plaintiff's Exhibits full.)

MISS BLANDING: I have no further questions, Your Honor.

[81] THE COURT: Do you want to question now or would you rather reserve your right to call him as part of your own case and question him then, you have the choice.

MR. McMAHON: I leave it entirely to Your Honor's convenience.

THE COURT: No, I leave it up to you.

MR. McMAHON: Either way. Well, it nobody has objection we might as well do it, the witness is on the stand. Some of the testimony has come in already and some of it would be by way of explanation.

THE COURT: Whatever you want to do.

Examination By Mr. McMahon

XQ. (By Mr. McMahon) Mr. Dufault, for sense of precision in the record will you spell Hodgson Park, please? A. Hodgson Park is H-O-D-G-S-O-N—Boatery Park is the official title.

XQ. Before you became Director of Parks and Recreation for the City of Pawtucket what was your position? A. Deputy Director of Parks and Recreation in the City of Warwick.

XQ. And how long were you in that position? A. Two years.

XQ. Now His Honor questioned you concerning the work done by the electrician. I believe you said the electrician [82] devoted a total of 40 hours, is that correct? A. Approximately.

XQ. Approximately how many total lights are involved in the Hodgson Park display? A. Bulbs or light sets, there's about 3440 bulbs within the light sets, there's strings of 25 and there's 132 sets of lights.

XQ. That's in addition to the twelve spotlights? A. Yes.

XQ. And there is also a electrical hook-up, is there not, in the wishing well? A. Yes, there is.

THE COURT: You're going a little fast. 132 sets of lights, each set has how many bulbs?

THE WITNESS: 25.

THE COURT: Now are we speaking, Mr. Dufault, of all the displays or just the one that has the nativity scene?

THE WITNESS: That's the total citywide display.

THE COURT: That includes the City Hall and the carousel and all the rest of it?

THE WITNESS: Yes.

THE COURT: Okay. Let's focus on the display of which the nativity scene is a part of, how many [83] total sets of lights do you have there?

THE WITNESS: I don't know exactly, Your Honor, I'll say about 100 sets of lights.

THE COURT: And how many of those lights are used for the nativity scene?

THE WITNESS: Two spotlights.

THE COURT: Is that all?

THE WITNESS: That is all.

THE COURT: Okay, thank you.

XQ. And those 100 sets are 25 lights each? A. Yes.

XQ. So that's 2500 lights approximately plus 12 spotlights? A. That is correct.

XQ. Now would you please describe generally the electrical work involved in the wishing well? A. One of the components of our annual Christmas display is to have a talking wishing well. What we do is we set up a sound truck and we have it lit obviously with spotlights so people can maneuver themselves to the wishing well. The children talk into the wishing well and we have a person in the sound truck who relates sounds back to them, usually appropriate.

XQ. Now does the setting up—

THE COURT: What do you mean by "usually appropriate"?

[84] (Laughter)

THE WITNESS: Sometimes he gets carried away and starts singing Christmas carols in spite of the people but that's his own particular quirk.

THE COURT: Adds a little zest.

THE WITNESS: Yes.

XQ. Now Mr. Dufault, do you know approximately the total expenditure in employee services at Hodgson Park for the 1980 Christmas display? A. I don't have the exact figure for Hodgson Park alone. I would think that, if I could place a percentage on it which I don't know if I can or not, it would be about three quarters of the total expenditure would be related to Hodgson Park. The total expenditure was $6,146 so I would assume about 75 percent of that total would be directly related to the Hodgson Park display. I don't know what that would be.

THE COURT: Let's set a figure. Give us an approximation, we realize you can't entirely.

THE WITNESS: I would say it would be around $4500.

XQ. And of that do you know how much cost relates specifically to the nativity scene? A. Yes, I think so.

XQ. And what is that figure?

[85] MR. DeLUCA: Your Honor, I object.

THE COURT: No, overruled.

A. I would say that the income services of the two gentlemen taking their approximately two hours, an hour of set up and an hour of breakdown, would be around $20.00.

THE COURT: So that of $4,500 your testimony is that approximately $20.00 can be apportioned as the cost for the nativity scene?

THE WITNESS: Yes.

XQ. Now Mr. Dufault, you were asked by Miss Blanding concerning the cost of the figures in the nativity scene. Do you know the cost of all of the lights, approximate cost of all of the lights at Hodgson Park? A. The figure is difficult to determine exactly because of the fact that we purchased them over a series of years. We have an ongoing renewal process where we purchase at least ten sets of lights every year. The cost of the light sets this year were $8.35 apiece. Going back through the records from ten years ago the price was about $4.10. If we could average a per unit cost I'd say somewhere, we'd probably average around six or seven dollars per set so I would say for the actual light sets would be about $800 and for the bulbs to go into those sets would be approximately the same. [86] I would say the value would be a cost to the city over the years at around $1600, $1700.

THE COURT: This is just for the lights now, is that correct?

THE WITNESS: Yes.

THE COURT: And this is just for Hodgson Park?

THE WITNESS: No, that's the total display. Again we go back to that maybe a 75 percent figure.

THE COURT: So give me a figure.

THE WITNESS: Testing my math, $1300 I would say approximately, somewhere around there.

THE COURT: It costs the city for lights at Hodgson about $1300. That's not a running cost each year though, is it?

THE WITNESS: No, no, that's the cost for the total amount of the lights over the past ten years. The actual, the

annual expense I would say would run for wire, replacement, spotlight holders which we have to get on a constant basis, refurbishing of light bulbs which is a constant problem through theft, would be somewhere around four, five hundred dollars annually.

THE COURT: Approximately four to five hundred dollars annually.

THE WITNESS: Yes.

THE COURT: We're still talking of Hodgson [87] Park.

THE WITNESS: Yes.

XQ. But the evidence you've presented with respect to the costs of the nativity scene was a purchase made in 1973, correct? A. Yes.

XQ. And there have been no purchases with respect to the nativity scene except for the spotlights since 1973, is that correct? A. That is correct.

XQ. Do you know the cost of the other elements of the Hodgson Park display? A. I have original purchase prices on some of them, yes. An example would be on the east bank of the river the display is on both sides of the river, Blackstone River, which separates Hodgson Park. We have Disney or character cutouts, wooden cutouts, those particular cutouts feature various different things, Disney characters, some Christmas symbols, trees, etc. The value of those would be approximately $150 apiece at the present time if we were to try to purchase that same type of thing.

XQ. Excuse me, $150 apiece, and how many figures are there? A. There are 21 wooden cutouts on the far side of the river. We also have within the display itself which [88] would be located on the west bank of the river, which is the same side as the nativity scene, we would have Santa and his sleigh with the reindeer and the original value of that particular piece was $1,458. We have a Canterbury musical group wich is a piece that's located on the Main Street end of Hodgson Park that cost $1,490. We have a small village made up of five different com-

ponents, four houses and a church, and the original value of the village is $1,250. The wishing well was originally built in house and cost us approximately $50 of materials and Santa's house in which he's located while he passes out the candy cost the city approximately $200 in lumber costs and we did that. We also have a series of variety of ornaments that are located there. Three Christmas trees that are lit that cost $280 originally. We also have some stars that are lit, there's three stars in particular, that cost was approximately $100 apiece and then we have garland, things of that nature which would probably be somewhere around $100.

XQ. Now as part of your responsibility have you determined the market value of the various elements in the display? A. Yes, I have.

XQ. Present market value? A. Yes.

[89] XQ. What's the present market value of the nativity scene?

MR. DeLUCA: Objection.

THE COURT: Overruled.

A. $200.

XQ. And what is the market value of all of the other elements in the Hodgson Park display exclusive of the lights?

MR. DeLUCA: Objection.

THE COURT: Overruled.

A. Running down them right now the Disney characters or wooden cutouts on the far side presently are worth $125 apiece. The stars are worth $40. The Santa, sleigh and reindeer is approximately worth $900. The Canterbury musical group is worth $600. The village is worth $400 and the wishing well and Santa's house have continued to keep their same value, 50 and 200 respectively.

XQ. So the total value of the display exclusive of the lights is approximately what, Mr. Dufault? A. At the present time I would say that would be totalwise approximately $2800 to $3,000.

XQ. And that includes the figure for the nativity scene which I believe you testified was what? A. $200. That figure is exclusive of the wooden cutouts which also has a, the total actually would be [90] approximately $5,000 including those cutouts.

XQ. Well, will you explain why you have excluded, why you have treated those cutouts separately? A. The wooden cuts were done in house by the city. They were not purchased from an outside vendor. That's a product that we ourselves would make up and have people within our own house paint and do of artistic value. Some appraising them separately, the other appraisals were done by a person, a display company that we have done business with in the purchase of the other various components.

XQ. So that the total value was approximately $5,000 of which the nativity scene is approximately 200? A. Yes.

XQ. Now Mr. Dufault, would you please describe for the Court the Hodgson Park area in terms of its interior, dimensions and terms of its location in the city? A. Hodgson Park is a passive park which is part of the old Slater Mill complex which houses Wilkinson Mill and Slater Mill. The park itself is divided by the Blackstone River, it's approximately 40,000 square feet with 21,000 on the east bank and 19,000 on the west bank. It's bordered by Main Street, Roosevelt Avenue and on the far side it would be bordered by Broadway. It's located in probably what is considered the middle [91] of the commercial district in Pawtucket.

XQ. Do you have the dimensions of that part of the area which is covered by the Christmas display, the entire Christmas display? A. That would be 39,767 square feet.

XQ. How much of that is occupied by the nativity scene? A. I don't follow your question. Actually the square footage—

XQ. The square footage in the area covered by the nativity scene? A. The nativity scene would cover approximately 140 square feet.

XQ. Out of how many? A. 39,767.

THE COURT: Give me that figure again as to the nativity scene.

THE WITNESS: It's about 140 square feet, it's a 10 by 14 exhibit.

XQ. Now Mr. Dufault, did you direct that certain photographs be taken of the Hodgson Park area at the time the Christmas display was in place? A. Yes.

XQ. And that includes the photograph which is Defendant's Exhibit A, does it? A. Yes.

[92] (Pause)

XQ. Mr. Dufault, I show you seven photographs and ask you whether these together with Defendant's Exhibit A were made under your direction? A. Yes, they were.

XQ. And I will ask you whether they constitute a fair and accurate representation of those portions of the Hodgson Park Christmas display which they purport to represent? A. Yes.

MR. McMAHON: Your Honor, I would ask that these be marked as Defendant's Exhibit letter with a sub number because I would like the witness to identify the angle of each of them.

MR. DeLUCA: We have no objection.

THE COURT: Is that number C, Miss Zinni?

THE CLERK: Yes.

THE COURT: All right, mark those C(1), (2), (3) as they fall.

(Photographs marked Defendant's Exhibits C(1) through (7)

XQ. Mr. Dufault, showing you Defendant's Exhibit C(1) I will ask you from what angle this photograph was taken and what portions of the Hodgson Park display is or are represented therein? [93] A. This particular picture was taken across the street, directly across the street on the Roosevelt Avenue side of Hodgson Park taken from an elevated height and seems to encompass about 85 percent, 80 to 85 percent of the total passive park area of Hodgson Park.

XQ. Mr. Dufault, would you please circle in pen the nativity scene?

(Witness marks photograph.)

XQ. Now directing your attention to Defendant's Exhibit C(1), it shows, does it not, the Blackstone River running through Hodgson Park, is that correct? A. Yes, it does.

XQ. And the square footage figures which you gave us are the figures embracing only both sides of the river, it does not include the area of the river itself? A. That is correct.

XQ. Now looking to the upper, slightly above the center of Exhibit C(1) on the other side of the river, I will ask you to describe the portion of the Christmas display which are shown on the far side of the river? A. There are 21 wooden cutouts on the far side portraying various different things and beings. Also on the far side of the river is the season's greetings which are a series of individually cut out letters that are painted in a fluorescent coloring with a Santa Claus between [94] the seasons and the greetings. They're placed on the wall facing the Roosevelt Avenue side. Also on the far side of the river is a series or string of lights on the trees that are located in the upper right-hand corner of this particular photo.

XQ. What are the dimensions of the season's greetings which is on the wall? A. Season's greetings, each of the individual letters are four foot high, two foot in width and spans a length of forty-eight feet.

XQ. And this is on the river wall? A. That's right on the river wall on the east bank. The individual wooden cutouts are approximately four foot high and they're placed on metal stakes which are driven into the ground and they are attached to those particular stakes. They all face, again they face the Roosevelt Avenue side.

XQ. Now in Exhibit C(1) to the right of the circle you have placed on the photograph there is a large treet. I will ask you whether that is a natural part of Hodgson Park or whether it is brought in for the Christmas display? A. That was a 40 foot blue spruce tree that was brought in as is brought in in years

past from an outside site. It was donated to the city by a citizen.

[95] XQ. And is that lighted in the evening? A. Yes, it is.

XQ. So that that is not part of the natural site but rather is an artificial part of the Christmas display? A. It's part of the display, that's right.

XQ. Now referring to Exhibit C(2), I will ask you to describe the vantage point from which that photograph is taken and how much of the display it encompasses? A. This particular picture was taken from Main Street again from an elevated height looking down, basically down the middle of the Blackstone River. It encompasses, as I see it, it seems to encompass about 98 percent of the actual passive park area in Hodgson Park.

XQ. And I will ask you on that exhibit if you would please circle the nativity scene?

(Witness marks exhibit.)

XQ. And with respect to Exhibit 3-C I will ask you to describe where that was taken from and what it encompasses? A. That particular picture was taken from a building on the corner of Roosevelt Avenue and Main Street at the same angle that the night time picture was taken from before and that particular picture seems to also encompass about 99 percent of the Hodgson Park area.

XQ. But in this particular photograph because of the angle [96] from which it is taken the nativity scene is blocked, is that correct? A. That is correct.

XQ. With respect to the portion of Hodgson Park on the western side, which I believe is the westerly side of the display on the Roosevelt Avenue side, are those portions, are those the main entrances to the display itself, people who go into the display? A. Yes.

XQ. And with reference to Exhibit C(3), would you please circle the steps which constitute the entrances to the display? A. In this particular picture there is only one set of steps evident, the northern steps down Roosevelt Avenue are

not. They would be located right in the corner of the Peerless building but I can pinpoint the southern.

(Pause)

XQ. Okay, on Exhibit C(3) would you please circle the steps which appear on that photograph?

(Witness marks photograph.)

XQ. And that is one of the two entrances to the display? A. That's correct.

THE COURT: These are all aerial photographs, aren't they?

[97] THE WITNESS: They're actually taken from building tops, the majority of them.

THE COURT: I mean the reason for asking the question, this isn't really the perspective a pedestrian would have of that particular area, is that correct?

THE WITNESS: That is a correct assumption.

THE COURT: Yes, all right.

XQ. But referring to Exhibit C(3) and the steps you have indicated as one of the entrances, going down those steps what would be the visitor's angle or view of the nativity scene? A. Going down the steps you would not be able to see it because it would be blocked by the spruce Christmas tree.

XQ. So that one standing on Roosevelt Avenue in the area of those steps would be blocked by the Christmas tree as far as the nativity scene is concerned? A. That is true.

XQ. And the fact of the matter is that one's viewpoint of the nativity scene from any angle depends upon where the individual happens to be standing with respect to the display, isn't that so? A. Yes.

XQ. Showing you Exhibit C(4) I will ask you the same question with respect to the angle from which that photograph is taken, what it depicts in the display? [98] A. The angle is from the corner of Roosevelt Avenue and Main Street and it is an elevated photo with a partial corner of the nativity scene shown in that particular picture.

XQ. And on that photograph, on that Exhibit C(4) would you please circle the nativity scene?

(Witness marks photograph.)

XQ. With respect to Exhibit C(5) I will ask you the same question as to angle and content? A. This picture was taken at ground level from the Broadway side which is on the east side of the river facing towards the Peerless building or Roosevelt Avenue area. In this particular photo we were shooting directly from ground level on the far side of the river.

XQ. And I will ask you whether Exhibit C(5) shows the second entrance of the steps which did not appear on the exhibit you have previously marked as being an entrance? A. Yes, it does.

XQ. And would you please circle on that exhibit the second set of steps?

(Witness marks photograph.)

XQ. Just for clarification, this was not taken from an elevated height I believe? A. That's correct.

[99] XQ. Unlike some of the others. Okay, with respect to Exhibit C(6) will you also describe the angle and content? A. This was taken from the actual level of the west bank of Hodgson Park and it is approximately five to six steps into the park after you go down the steps that are located at the Main Street-Roosevelt Avenue end of Hodgson Park.

XQ. And approximately what portion percentagewise of the total display is shown here? A. Of the total display or just the west bank?

XQ. The Hodgson Park display, total Hodgson Park display. A. I would say probably 30 or 40 percent.

XQ. Now with respect to Exhibit C(7) I will ask you again the same question with respect to angle and content? A. This picture was taken about five to six feet to the right of the steps at the corner of Main Street and Roosevelt Avenue and was taken from the level before you enter the actual Hodgson Park, it's taken at the above level which would be the Roosevelt Avenue level of that particular picture.

XQ. And approximately what percentage of the total display is shown in that exhibit? A. That would include about 45 percent of the actual exhibit.

[100] XQ. Now Mr. Dufault, do you know the dimensions of the various figures in the entire Hodgson Park exhibit? A. Yes.

XQ. Would you please in any order give us the dimensions and describe the particular item and give us the dimension of each? A. On the west bank of the river the first item upon entering from the City Hall side of Roosevelt Avenue entrance you run into the wishing well which has a height of 7 feet and a width of 5½ feet. From there you would move to Santa's house which has a height of 14 feet, it's 11 foot wide and 14 foot in length. You would then run into the various stars which are four foot point to point. You have three Christmas trees that are located along the river on the west bank which is 11 feet high and 7½ feet wide.

XQ. May I interrupt you there. Those are artificial Christmas trees? A. Artificial Christmas trees, that's correct.

XQ. What are they made of, wood? A. Wood. Then you have the nativity scene which encompasses a space of 14 foot by 10 foot, has figurines anywhere from 12 inches to 5 foot high and we have the actual blue spruce Christmas tree which is approximately 40 foot high. The village which is a series of buildings [101] that are 2½ feet high by a foot and a half wide. Canterbury musical group which has an elevation of 6 foot and encompasses a space of about 8 by 8. The largest item on that particular side of the river as far as length is Santa and his sleigh and the reindeer which is approximately 25 foot long and raises to a height of 15 feet, the highest reindeer. On the opposite side of the river the Disney characters are 4 foot high and the season's greetings that I mentioned earlier are 4 foot high individually, 2 foot wide and it encompasses 48 foot in length along the bank of the river.

XQ. Now will you focus on the nativity scene, then give us the dimensions of the figures that pertain in there? A. The nativity scene was made up of a small crib which is about 6 inches off the ground, there is a fence around that, that's approximately 8 foot and a shack that's about 4½ foot high. There is a boy approximately 12 inches long, man, a woman that are in a kneeling position approximately 2½ to 3 foot high. There are three kings, one is 3 foot, one is 4 foot, one is 5 foot. Three shepherds in a kneeling position all approximately 3½ foot. A cow, mule, two camels and two sheep which are all about 2 foot and two angels, one angel is approximately 12 inches and [102] the other one is approximately 3 foot and they are the components of the nativity scene.

XQ. Are there any ceremonies, public ceremonies held in the Hodgson Park display during the Christmas season? A. The opening of the park and the actual lighting of City Hall and Hodgson park takes place in a small ceremony each year.

XQ. Is that the only ceremony during the Christmas season at Hodgson Park? A. Yes.

XQ. When does that occur? A. That would occur at the opening of the lights which this year was December 5, 1980. The celebration actually takes place with Santa Claus arriving on the back of a fire truck after touring the city and then Santa Claus and the Mayor of the city go to the main power switch at which time they put on the lights to Hodgson Park. Santa Claus then assumes a position in his house and the talking well starts up and the various children of the city would then receive candy from Santa Claus and talk into the wishing well.

XQ. Is that the entire ceremony? A. That is the entire ceremony.

XQ. Now I believe you testified, Mr. Dufault, concerning other portions of the city's Christmas display other [103] than Hodgson Park. Would you very briefly describe those? A. There are four components with Hodgson Park being one. The second is the carousel exhibit that we have in

Slater Park. What we do is we decorate the carousel with a small lighting display and on the three Sundays previous to Christmas we have free carousel rides for all the children as well as Santa Claus set up so that the children can receive candy from him and that would take place on all three of those particular Sundays before Christmas time. The third component would be the City Hall celebration where we have a caroling session and a Christmas party in the hall as well as the interior of the building being decorated, each of the various different people that work in City Hall receive a plant from the Department of Parks and Recreation usually pertinent to the Christmas season. The fourth component is a Christmas party at the ice arena for mentally retarded children where we have Santa Claus, who is a city employee, come forward and pass out candy to the various different kids and we also decorate the ice rink with a small Christmas tree and some lights for that occasion.

XQ. How far is the City Hall property from the Hodgson Park property approximately? [104] A. About 295 feet.

XQ. And is the City Hall display in any way tied into the Hodgson Park display? A. It's tied in by the fact that we put it all together ourselves, yes. The lighting would be placed on at the same time as the actual Hodgson Park display. The actual tying in of the two would be the fact that we do tie in the initial ceremonies of putting the lights on together with those two, yes.

XQ. Is a single sound system used for both? A. Yes.

XQ. It's the identical system? A. It's the same exact system.

XQ. Does the city also participate in the erection and maintenance of a Christmas tree at the foot of the mall on Main Street? A. At the present time we are storing that tree. We took it down approximately I would say at this time three weeks ago. Members of the Parks and Recreation Department maintenance staff took down that particular tree and it's presently being stored at McCoy Stadium which is one of the recreational facilities under my aegis.

XQ. Who owns that tree? A. I believe it's owned by the Downtown Mall Merchants [105] Association.

XQ. How far is that tree from the Hodgson Park property? A. It would be approximately 285 feet.

XQ. Just briefly, Mr. Dufault, does your department participate in, as a matter of city policy in other holiday celebrations than Christmas? A. Yes, we do. During the July 4th or July 3rd night the City Council directs the fireworks display that is done. The Department of Parks and Recreation actively oversees the firing of those particular fireworks to the extent that our people would tell them where to set up their equipment and where to dig, etc.

XQ. Do you know the approximate costs of the 4th of July fireworks display? A. $3500.

XQ. And do you have knowledge of city sponsorship of other national holiday celebrations during the year? A. I believe the city would also participate in, I know they participate in some of the Veterans parades, I'm not exactly sure to the extent that they do.

XQ. Those other holiday celebrations would not be within your jurisdiction? A. That is correct.

MR. McMAHON: No further questions, Your Honor.

[106] *Further Examination By Miss Blanding*

Q. (By Miss Blanding) Mr. Dufault, I believe on direct examination you testified when I was showing you the invoices which have been marked for identification for plaintiff that you had no knowledge of whether any of those lights or light fixtures or anything pertaining to electricity for years prior to 1980 were used for the Christmas display, did you not? A. I had no direct knowledge of that, that's true.

Q. But on cross examination didn't you testify that the total cost of the lights was approximately $1300 from Hodgson Park and that those lights had been purchased over a period of ten years and that now that the annual cost to the city for light fix-

tures and lights is approximately four to five hundred dollars a year? A. Yes, I had mentioned upon that—

Q. Did you, could you just answer yes or no, did you testify to that on cross examination? A. Repeat the question, please.

(Previous question read back.)

A. I'd like to explain my answer to that.

THE COURT: Yes, you may, of course.

THE WITNESS: Yes, what I had mentioned in the answer was yes, I did testify to that, what I was saying, as I mentioned at that particular point, was [107] that we, because of our reoccurring expenses of fixtures breaking down, getting old, worn out, that we have to replace them, what I was taking, and I have no direct knowledge of the cost between the tenth year and the present year, what I was doing was making an actual unit cost which was an average of the original cost ten years ago with today's cost so I do not have direct knowledge as to the actual cost of that particular item. I do know what this year's cost was.

Q. Didn't you testify that the intial expense to the city for lights which was not repeated annually was approximately $1300 spread out for the several years? A. Over ten years, yes.

Q. And now you're saying you have no direct knowledge of that figure? A. Only in what I just previously explained.

Q. So you're calculating that figure based on what was spent this year in lights? A. And what was spent ten years ago, yes, that's correct, that's a correct assumption.

Q. How do you know what was spent ten years ago? A. I looked it up.

Q. So you took one figure from ten years ago and one figure from this year and from that you assumed a cost over a period of ten years? [108] A. That is correct.

Q. Why didn't you look up the actual expenses over the ten year period so that you could get an actual cost? A. It's very difficult because of the accounting procedures that were in-

volved prior to, and the Finance Director could answer this question better than I, but in asking for the information prior to the 1976 or '77 accounting years there was no line item breakdown individually for that particular item, so it happens that the vendor of ten years ago for the actual Christmas display, I found that one individual purchase item order.

Q. Well, what about the years between 1976 and 1980, couldn't you have looked those up? A. I could have.

Q. But you didn't? A. No.

Q. I'd like to show you these invoices again that were marked Plaintiff's Exhibit 7 for identification. This is an invoice dated December 13, 1978, required for Christmas display, referring to bulbs, spotlight holders, floodlight bulbs and friction tape, you remember I asked you about that previously? A. Yes.

Q. What is the total cost indicated in that? [109] A. It's $1131.57.

Q. And here is another bill invoice dated the same date, December 13, 1978, and it states "10 watt bulbs, green, red and yellow" and may I ask you what the total is on that invoice? A. $548.10.

Q. Here is another invoice dated two weeks earlier, December 1, 1978, for wire, sockets and bulbs, and what is the total cost on that invoice? A. $186.85.

THE COURT: But this pertains to the entire display, does it not?

THE WITNESS: Yes.

THE COURT: The figures.

MISS BLANDING: Yes, Your Honor, but I believe he indicated that the cost for the entire display over a ten year period was only $1300 and then approximately four or five hundred dollars additionally each year to replace bulbs and that would relate obviously to the cost of lighting up the particular area that the nativity scene was in and I am indicating by these that the actual figures which I assume Mr. Dufault could have checked on if he had so chosen indicate a much higher figure just for the last four years.

[110] THE WITNESS: I believe, Your Honor, the original testimony was on present value, we were trying to determine the present value of the lights, not the actual cost to the city. At least that was my assumption.

THE COURT: Be that as it may, the question is whether you're going to be able to make a valid argument to the Court as to the cost of the nativity scene. It's no concern and has no constitutional concept that the City of Pawtucket wants to spend money for a general Christmas display, this is their prerogative.

MISS BLANDING: I understand that, Your Honor.

THE COURT: And whether or not they spend is between the city and its citizens. To put it somewhat crudely but I think very candidly, it's none of our business.

MISS BLANDING: Well, Your Honor, the first exhibit, the first photograph that was entered as defendant's exhibit was a photograph taken at night showing the lights at Hodgson Park. Now Mr. Dufault has testified that only two spots light the nativity scene, however, I was going to question him and I will show that whole area is lit up and you cannot say that only two spotlights light up that nativity scene.

[111] THE COURT: All right, you will have room to argue in your brief, go ahead.

Q. This is an invoice dated August 11, 1978, bulbs, Christmas decorations, and what would be the total figure there? A. $434.80.

Q. The invoice for December 1979 Christmas bulbs and the total figure there? A. $67.20.

Q. This would be an invoice dated November 26, 1979 for bulbs of various colors and what is the total figure there? A. $1149.

Q. There was also an invoice dated January 4, 1979, C & K Electric Company, labor and materials to connect Christmas lights as directed at Slater Mill park, November 27, 1978 through December 8, 1978, what is the total figure there? A. $2946.25.

Q. Now then they say "Slater Mill park" is that Hodgson? A. I believe they're referring to Hodgson Rotary Park, yes.

Q. And you testified previously that in terms of other lighting the cost of lighting Hodgson Park is three quarters of the total lighting cost approximately, did you not? [112] A. I would think so, yes, approximately.

Q. Finally there's an invoice dated December 16, 1980 for Christmas bulbs and the cost there? A. $136.

Q. So that the figures indicated in these invoices just from 1978 to 1980 indicate a much higher figure than you had previously estimated, is that not true? A. I don't know if that assumption could be drawn as to the present value because I just took general figures, I'm not an expert as to what the depreciation would be on something like that. I just used a general figure basis.

Q. I thought your testimony as to lighting was as to cost to the city, not to present value? A. It was to the present value I believe, at least I answered under that assumption.

MISS BLANDING: I'd like this admitted as a full exhibit.

THE COURT: Mr. McMahon.

MR. McMAHON: No objection.

THE COURT: No objection?

MR. McMAHON: Based on the testimony of what they're worth, no objection.

THE COURT: They may be marked. What number, Miss Zinni?

[113] THE CLERK: 7.

(Plaintiff's Exhibit No. 7 marked.)

Q. Mr. Dufault, I'd like to show you Defendant's Exhibit 3 and ask you if you recognize that? A. Yes, I do.

Q. And is that not a picture of the Hodgson Park area with the Christmas display lit at night? A. That is a picture of the west bank of the display, yes.

Q. Did you direct this picture to be taken? A. Yes, I did.

Q. And doesn't this show lighting actually lighting up the whole park area? A. It does.

Q. So that the lighting that's on the Christmas tree and all the other trees surrounding the park and the other figures, that all the lighting actually lights up the whole area including the nativity scene area, is that not correct? A. Including the street lights, yes.

Q. Well, my question I believe was that the lighting that is on all of the trees surrounding the park, on the Christmas tree and on the various figures and the spotlights light up the whole Hodgson Park area including the area in which the nativity scene is, is that correct? [114] That's correct.

Q. Now it's my understanding that you directed the taking of all of these pictures, is that correct? A. Yes.

Q. Why is only one of them in color? A. I don't know the answer to that. We just asked for black and white prints, we wanted a color print of the night time photo obviously for effect.

Q. And was this night time photo also taken from the top of buildings? A. Yes, it was.

Q. I direct your attention to C-1, this is a view from the west side of the Hodgson Park area, is that correct? A. That's correct.

Q. And where does this picture indicate that the nativity scene is located in the whole area? A. I don't understand the question.

Q. Is the nativity scene not located in the center of the park area? A. Lower center, yes.

Q. Are these bus stops right there? A. Yes, they are.

Q. Would you say that it's probable that most of the people that would be viewing this scene would be standing in the area of the bus stops and the street? [115] A. That is a correct assumption, yes.

Q. Not on the tops of buildings? A. That's correct.

Q. And people standing at these bus stops which appear from this picture to be right across from the nativity scene would just have to turn around and the nativity scene would be right in front of them, isn't that correct? A. From those particular two bus stops, yes, they continue on down.

Q. What continues on down? A. There's another section for a bus stop there.

THE COURT: I didn't hear you, what did you say?

THE WITNESS: In other words, there's two bus stops showing here, there's the actual bus stop itself is elongated from that particular picture. In other words, the buses would stop from here all the way back down to the corner of Roosevelt and Main, that's a better picture.

Q. I believe you're referring to C(3)? A. Yes.

Q. Defendant's C(3)? A. Yes.

Q. C(3) indicates that there are only two shelters where [116] people may stand? A. There are only two shelters.

Q. And those two shelters are right across from the nativity scene? A. Yes.

Q. Was there any particular reason for taking these pictures from the top of buildings? A. To get a better view.

Q. But not a better view in terms of who would be viewing the nativity scene in actual fact? A. I don't understand what you mean.

Q. Taking them from tops of buildings would not give you a better view in terms of how passers by and residents would actually see the display? A. That is correct, it gives you a better view of the display but not what you would see from ground level, that's true.

Q. May I ask you, referring again to Defendant's Exhibit C(1), what this construction is and I'm referring to the construction in the left-hand corner of the building that looks like a shelter? A. That's Santa's house.

Q. Santa's house? A. Santa was located, that's polyethylene plastic which protects him from the wind, that's what that particular [117] structure is. He has a chair that's set inside there so that when the children sit on his lap they're protected from the elements to some extent.

Q. Are you aware if during 1980 Christmas season that was used for anything else? A. Not to my knowledge outside of that.

Q. No caroling was conducted from there? A. Not to my knowledge.

Q. Are you aware of the press conference or rally or caroling or whatever that Mayor Lynch held in December of 1980 in Hodgson Park? A. Yes, I'm aware of it.

Q. Where was that conducted from? A. It was located in approximately this area right here.

Q. You mean there was a podium that's not there now? A. Yes.

Q. And that was right in front of the nativity scene? A. Yes.

Q. And would you call caroling a celebration? A. I really have no opinion about that.

Q. Mr. Dufault, when was that podium that you just referred to erected? A. The one for the press conference you're referring to?

Q. Yes. A. The morning of that particular conference.

[118] Q. Was it put up for that purpose? A. Yes.

Q. And when was it taken down? A. Immediately after.

Q. Now you gave a figure of 39,000 plus square feet as the area that the entire Christmas display in Hodgson Park encompassed, is that not right? A. I gave that as the figure of the passive area that is Hodgson Park.

Q. And you compared that to the square footage that was taken up by the nativity scene, is that right? A. Yes.

Q. But the 39,000 plus square feet did not refer only to square feet that were covered by various Christmas displays, did it? A. No.

Q. It refers to the whole Hodgson Park area? A. That's correct.

Q. And actually a great many of those square feet are not covered with anything but grass, is that right? A. That's correct.

Q. So that if you're going to compare the square footage that the nativity scene takes up as opposed to other parts of the display then a fairer comparison would be the square footage actually taken up by each of those [119] other parts of the display, isn't that right? A. I wasn't comparing, I just answered the question as it was stated to me.

Q. You've referred to papers during your testimony? A. Yes.

Q. May I see those papers? A. Sure. Here's a copy of originals, these are just copies.

(Pause)

Q. If I may refer to the papers which you have been referring to labeled "Appendices." A. Yes.

Q. Did you compute the figures for this? A. Did I compute the figures, was that the question?

Q. Who composed this? A. I did.

Q. You did, okay, and this paper indicates under In Time Services a watchman? A. Yes.

Q. Could you tell me when there was a watchman guarding the Christmas display? A. Seven days a week upon the lighting of the display on December 5th. Upon the set-up of display and the actual lighting of the display on the 5th for second shift coverage seven days a week we put a watchman on to oversee the actual operation, make sure the lights [120] went on, make sure there was no theft of bulbs, etc., general vandalism protection.

Q. This indicates there was a watchman there for two shifts? A. Yes.

Q. What hours would the watchman be there? A. The way we have it set up they would work four to midnight and midnight to eight.

Q. How about during the day? A. During the day they would have general workers that are part of the park attendants staff there.

Q. Would they be there specifically to guard the nativity scene and the Christmas display? A. Not really, they would be there replacing bulbs, sometimes replacing broken wires, sometimes there would be no coverage at all there. That would be on a day time coverage of the display was basically a reactionary one.

Q. Reactionary to what? A. To broken bulbs, bulbs that were stolen, etc.

Q. And these watchmen were there for four weeks? A. Approximately, yes.

Q. Is there always a watchman on the Hodgson Park Christmas display and in the prior years has there been? A. I don't know.

[121] Q. The total cost for the watchmen this year excluding whoever was there during the day by your figures was $2,240, is that right? A. Approximately, yes. Certain individuals make more money than others because of longevity pay, etc.

Q. These individuals were city employees? A. Yes, they were.

Q. I believe in response to some questions that Mr. McMahon asked you you indicated the fair market value of several different items in the display including the nativity scene, is that right? A. Yes.

Q. How did you arrive at those fair market values? A. The person that we originally bought the display from was Purist Display Company, I had the representative of Purist Display down to evaluate the cost of the present display. He was the one, those figures are actually derived from his quotes.

Q. Are they his quotes? A. Yes.

MISS BLANDING: I have no further questions, Your Honor.

Re-Examination By Mr. McMahon

XQ. (By Mr. McMahon) Just very briefly, referring to, Defendant's Exhibit A, Mr. Dufault, it shows the [122] lighting only on the west side of the river, is that correct? A. That is correct.

XQ. There is similar lighting in the trees on the west bank of the river, correct? A. Yes.

XQ. Is is not true that visitors go into the display on both sides of the river? A. That is correct.

XQ. And visitors in the display on the east side of the river probably would not be able to see the nativity scene at all, is that not correct? A. That is correct.

XQ. The Hodgson Park area is recessed from the sidewalk, is it not? A. Correct.

XQ. So that one driving by on Roosevelt Avenue at least because the area is recessed probably could not see the nativity scene at all, isn't that correct? A. This could very well be, I'm not exactly sure, I've never really driven by in a car and looked but it is recessed down in, you probably would be able to see the top of the, I know you can see the reindeer very clearly which is about 15 feet high but the actual nativity scene, the highest point in that scene is only [123] five feet.

XQ. If the nativity scene were not in this display would the costs relating to the watchmen and the general lighting in the area except for the two spotlights, would that cost change in any way?

MR. DeLUCA: Objection.

THE COURT: Overruled.

A. No, it would be the same.

MR. McMAHON: No further questions, Your Honor.

THE COURT: Anything further?

MISS BLANDING: No, Your Honor.

(Witness excused.)

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[1] THURSDAY, FEBRUARY 5, 1981

(Court convened.)

MISS BLANDING: Your Honor, for out first witness we would call Richard Mumford.

THE COURT: Didn't counsel advise the Court that they wanted to have the Mayor testify so that he could be free today.

MR. McMAHON: Yes, Your Honor, but I think the witness will be brief.

THE COURT: Okay, I just say it, bring it to mind that if you wanted to call him out of time I don't think anyone would object and I certainly wouldn't.

RICHARD MUMFORD,

having been first duly sworn, testified as follows:

Direct Examination by Miss Blanding

Q. (By Miss Blanding) Mr. Mumford, are you employed by the City of Pawtucket? A. Yes, I am.

Q. And in what capacity are you employed? A. I'm Director of Finance.

Q. How long have you been the Director of Finance? A. Since March of 1977.

Q. As the Director of Finance what are your duties? A. As Director of Finance I'm the chief fiscal officer for [2] the city in charge with the preparation of the budgets and the planning and execution of the long range financial goals of the city.

Q. Are you familiar and have access to the accounts of the city, in other words when the city has to pay bills, keeps receipts of those and also budgets? A. Yes, I am.

Q. Now, Mr. Mumford, in the subpoena you were served to appear today you were requested to bring certain documents with you relating to budgetary expenditures, did you bring those with you? A. Yes, I did.

MISS BLANDING: If I may have a minute, Your Honor.

(Pause)

Q. I'd like to show you these and ask you if you can recognize them? A. Yes, I do.

Q. These are copies, did you have these prepared? A. Yes, I did.

Q. And what were they prepared from? A. They were prepared from the original documents which you have also.

Q. What was the original document? A. Annual operating budget of the City of Pawtucket for the [3] fiscal year ending June 30, 1981.

Q. And the other ones are for different years? A. Yes, they are.

Q. The same things? A. Yes.

Q. These are accurate copies of the originals? A. Yes, they are.

MISS BLANDING: May I have these marked as Plaintiff's Exhibit 8.

MR. McMAHON: No objection.

(Plaintiff's Exhibit 8 marked.)

Q. Mr. Mumford, this is the budget appropriations for the year 1980-81? A. Yes.

Q. And there is a line on here for Christmas decorations on the second page stating that the appropriation was, excuse me, the request was for $4,000, the final appropriation was $3,500, is that correct? A. Yes, that's correct.

Q. Now is that the amount that was spent on Christmas decorations? A. For the year ending June 30, 1981 which hasn't occurred yet, the end of that year. I don't believe we expended actually the full amount of the 3,500.

THE COURT: I'm sorry, I'm not following you. [4] What is the question, for the year ending what, please?

THE WITNESS: For year ending June 30, 1981.

THE COURT: Yes, how much was spent, please?

THE WITNESS: We appropriated $3,500 but to date I doubt if we have spent the full amount for that line item.

Q. Now what exactly does that line item include? A. That line item includes those expenditures which have been appropriated for the celebration of the public holiday, its Christmas.

Q. Would that include the labor that was paid for in terms of municipal employees? A. No.

Q. That would come under a different line item? A. Yes, it would.

Q. And would that include payment for the electricity for the displays or would that come under the light and power line item? A. I believe the electricity would probably be charged into that line item as a Christmas expense.

Q. So the Christmas decoration line item would include whatever was purchased for the display plus the electricity that was used? A. I believe so, yes.

Q. And the labor would come under a different line item? [5] A. Yes, it would.

THE COURT: Now Mr. Mumford, that's for the entire display, is that correct?

THE WITNESS: Yes, that's correct.

Q. Is there any further breakdown than this of how much the city spends for the Christmas display? A. The most, let's see, detailed will be found in the documents which I provided under the subpoena.

Q. The invoices? A. Yes.

Q. Is that what you mean? A. Hm, mm.

Q. Is there any document which combines the amount of time the city workers spent on this in terms of city expenditures in paying them plus the amount that was spent in purchasing and in lighting equipment? A. No, there is no combined document.

Q. Now I would show you this document which says "Budget Request 79-80 Final Appropriation," this was for last year? A. Yes.

Q. And for Christmas decorations on this appropriation what was the final appropriation for 1979-1980? A. It's $4,000.

Q. And do you know if that entire amount was spent? [6] A. I don't know if the entire amount was spent, I doubt it, I don't think it was.

Q. But the amount expended could go up to $4,000, the final appropriation, is that right? A. Yes, that's correct.

Q. And this is the same document regarding final appropriations for the year '78-'79? A. Yes, it is.

Q. And for Christmas decorations during that year the final appropriation was also $4,000? A. Yes, that's correct.

Q. And for the year ending '77-'78 the line item for Christmas supplies final appropriation was $2,500? A. Yes, that's correct.

Q. Now I would assume if in 1977 and 1978 the final appropriation was $2,500 and the next year it went up to $4,000 that the reason for that would be the $2,500 wasn't enough, would that be a reasonable assumption? A. Yes, it is.

Q. And for 1976-77 the final appropriation for Christmas decorations was $3,000? A. Yes, that's correct. I'm sorry, it was $4,000.

Q. This I believe would be the final appropriation for '75-'76, is that right? A. Yes, that's correct, and the line item is $4,000.

[7] Q. So except for that one year it has been pretty consistently $4,000? A. Yes, that's correct.

Q. So I would assume that if over a period of five or six years each year at $4,000 was requested and appropriated that that would be based on the reasonable expectation of what would be needed? A. Yes, that's correct.

Q. And in none of these cases the cost of labor is included in that line item, is that right? A. No, it's not.

Q. What is this? A. This is a picture of a trial balance report which is a, it's a monthly document prepared by the city which is a recap there for balancing purposes of the expenditures related to the recreation department of the city. It's a line item accounting.

Q. All right, would that be for an entire year or for the month? A. 6/30/1978, this would be for the entire year.

Q. For the entire year? A. Yes.

Q. And this indicates for the '77-'78 year $2,431.18? A. No.

Q. I'm sorry, $1,568.82? [8] A. Yes.

Q. Was spent, was expended from the $4,000 amount?

THE COURT: Tell me, Counsellor, I feel constrained to ask you, how does this help me? This is for an entire display that covered not only that portion of the scene we visited but as well as other places.

MISS BLANDING: Well, Your Honor, Mr. Dufault testified as to the percentage that he felt was expended upon the nativity scene and upon the Hodgson Park area.

THE COURT: All right.

Q. Mr. Mumford, this has already been introduced as Plaintiff's Exhibit 7, or part of Plaintiff's Exhibit 7, and purports to be an invoice from C & K Electric Company, Inc., for the year 1979 regarding labor and materials to connect Christmas lighting as directed in Slater Mill park and the total amount indicated on the invoice is $2,946.25. Do you know what that would be for exactly? A. I believe it's for the wiring, let's see, and the materials for the wiring at the Christmas display.

Q. This would be the Hodgson Park area? A. Yes, according to the invoice, yes.

Q. Just for that area? A. Well, according to the invoice, yes.

[9] Q. And that would be, it also says "labor" here. Now Mr. Dufault testified that this year city employees performed that function. Do you know if the city employed people from C & K Electric Company in 1979 to set up wiring? A. Yes, I believe so. Let's see, the function was subcontracted out.

Q. And this would be the area that the nativity scene is located in, is that right? A. The entire area.

Q. Right, but the nativity scene is located in the area that this lighting refers to? A. This is located within the park, yes.

Q. I'm going to show you this document and ask if you can identify it? A. This document appears to be a check of the City of Pawtucket, it's a processed check for a payment to the Imperial Electric Company, Inc., for $1,223.62.

Q. And that's dated January 11th of this year? A. No, it's of last year.

Q. Last year? A. January 11, 1980.

MISS BLANDING: I offer this as plaintiff's next exhibit.

(Check dated January 11, 1980, marked [10] Plaintiff's Exhibit No. 9.)

Q. Mr. Mumford, in the documents that you produced I didn't see an invoice that went with this. Do you know what that expenditure is for? A. Not off the top of my head, no, I don't.

Q. Were all the expenditures that you put, that you brought in related to the Christmas display? A. Related to the 355 line item, yes, it was within the budget.

Q. So this would have gone for the Christmas display? A. I believe so but I don't know. I don't know exactly.

MISS BLANDING: I have no further questions, Your Honor.

THE COURT: Do you have any questions of this witness, Mr. McMahon?

MR. McMAHON: Yes, Your Honor.

Cross Examination by Mr. McMahon

XQ. (By Mr. McMahon) Mr. Mumford, referring to Plaintiff's Exhibit 8 about which Miss Blanding questioned you, all these documents indicate is an overall expenditure for the entire Christmas display of the City, is that correct?

A. Yes, that's correct.

XQ. These documents and all the documents you have been relating to the budget item do not break down different elements [11] of the Christmas display as to cost, is that correct? A. Yes, that's correct, they do not.

XQ. Before this suit arose, Mr. Mumford, had you ever had occasion in any of your budgetary preparations to break down separate elements of the Christmas display? A. No, I did not.

XQ. You have always treated it as an overall city expenditure, is that correct? A. Yes, that's correct.

* * *

[19] MICHAEL WERLE,
having been first duly sworn, testified as follows:

Direct Examination by Miss Blanding

Q. (By Miss Blanding) Dr. Werle, what is your profession? A. I'm a clinical psychologist.

Q. And are you licensed to practice clinical psychology in the State of Rhode Island? [20] A. Yes, I am.

Q. How long have you been so licensed? A. Since 1970.

Q. And what exactly is your license in the state? A. I'm not sure I understand the question.

Q. Is your license called Clinical Psychologist? A. The license I believe is just psychologist.

Q. That allows you to enter into private practice, counselling? A. Yes, it's required in order to be in private practice.

Q. And do you have any other licenses? A. No.

Q. Or are you registered on any other list, qualification list? A. Yes, I'm sorry, I'm a registered person in the National Register of Health Service Providers in Psychology which is a national register of psychologists.

Q. And what is the purpose of that registration? A. Essentially they're, to standardize the base line requirements for private practice for third party payers, insurance companies, Blue Cross.

Q. Those are national standards? A. Those are national standards.

Q. How long have you been registered with them? A. Since its inception in 1975.

[21] Q. Where did you receive your professional training in psychology? A. Boston University.

Q. And what degree did you receive from Boston University? A. E.D.D., a doctor in education.

Q. And was that in any particular specialty? A. Yes, it was in college counselling. It was preparation for work in college counselling centers as a psychologist.

Q. And when did you receive that degree? A. 1969.

Q. Now as part of that degree program did you participate in any clinical program or training programs? A. Yes.

MR. McMAHON: Objection, Your Honor, perhaps I didn't hear the question.

THE COURT: She wants to know if he participated in any training programs.

MR. McMAHON: I thought I heard the word "political," I'm sorry.

MISS BLANDING: No, clinical.

MR. McMAHON: I'm sorry, Your Honor.

THE COURT: All right.

THE WITNESS: Well, it was a doctoral program, had extensive practical work during which time I worked [22] in a variety of clinical settings, one year in the Institute for Mental Health, one year at Shirley Industrial School in Massachusetts and one year in a private school.

Q. And what other academic training or degrees do you hold? A. I hold a Master's in education from Northeastern University in reading and a Bachelor's from Balhigh in History. I'm also certified as an effectiveness training instructor through effectiveness training. This involves parent effectiveness training which I've been extensively involved in in Rhode Island for the past five years.

Q. What are the requirements for that certification? A. Training that's developed by effectiveness training in California.

Q. What is your present occupation? A. I'm in private practice now consulting in clinical psychology, I have been for three years.

Q. And where is your office located? A. 849 Post Road in Warwick.

Q. As a clinical psychologist with a private practice, what exactly do you do? A. I have a general practice, I work with adults, families, marriage counselling and children in about equal parts. I also consult to two programs in the state, CODAC in [23] Cranston and the ROAD program in Woonsocket.

Q. And what do those two programs, what are they involved with? A. Those are involved in substance abuse treatment, alcohol and drug abuse treatment.

Q. Prior to entering private practice in 1978 were you employed in any other professional psychology positions? A. Yes, I was clinical director of CODAC for six years and before then I was associate professor of psychology at Salve Regina College from 1969 to 1974. I was chairman of the department of psychology as well as director of the counselling center at the college for two different years. Before then I was an assistant professor of education, Northeastern University, from 1965 to 1969. Before that I was an elementary reading teacher.

Q. Do you belong to any professional associations? A. I'm a member of the Psychological Association, the Rhode Island Psychological Association and the American Association of the University of Professors.

THE COURT: Doctor, I think for the record the acronym CODAC might not mean very much.

THE WITNESS: I'm sorry, it's Community Organization for Drug Abuse Control.

Q. Now Doctor, in your present practice, would you describe [24] what percent of your patients are children and what percent are adults? A. I'd say it's about 40 percent children and 60 percent adults.

Q. And where do you get referrals from for your clients? A. A large percentage of my referrals for children are from school systems. My adults tend to be referrals from physicians, lawyers, really a fairly broad range of referral sources.

Q. Dr. Werle, have you seen the nativity scene which is the subject of this suit? A. I'e seen photographs of the nativity scene. I did see the display from the street, I was in Pawtucket on another venture and saw the display from the street, the lighted trees.

Q. Okay, and when did you see that? A. I saw that shortly before Christmas, I was in fact lecturing to a group of Pawtucket city employees on the dangers of smoking and on my way to the City Hall noticed the lights, was very attracted by the lights and had planned to go in to see the rest of the display, did not because I didn't have enough time to do that and meet my obligation.

Q. Now as part of your clinical work with your patients have you done any work relating to symbols and how [25] people identify with symbols? A. I've done a lot of work with children particularly in the second and third grade which is a period where a lot of identification is going on, that is, children are beginning to really take on a self concept and symbols play a very important part of that process and children, if their father is in the military for instance will take on the symbols of that in terms of dress in terms of medal or hat. Symbols take on a great deal of meaning for children in the process of identification as they do for adults but it's more visible and obvious with children.

Q. Now, on Tuesday there was, you were not here Tuesday, were you? A. That's correct, I was not.

Q. There was testimony by Daniel Donnelly and Steven Brown that the nativity display in Hodgson Park represented to them a religious symbol and indicated support from the city for that symbol. Steven Brown also testified as to his sense impressions from callers who had telephoned in to him regarding the scene. Mr. Brown also testified as to his sense impressions from callers who in his impression from many of those calls were that the people who called perceived the nativity scene in Hodgson Park as a religious symbol and as being [26] supported by the city. Now, do you have an opinion as to what psychological effects there would be on an individual who felt the way these people described this feeling and who did not believe in that particular religious symbol or religion it signified?

MR. McMAHON: Objection, Your Honor.

THE COURT: What grounds?

MR. McMAHON: First of all it's leading and secondly, it's based on a characterization of testimony that's in the record that this witness did not hear and thirdly as a hypothetical question it is grossly incomplete.

THE COURT: Counsellor, with all due respect for all grounds, none of which have merit. Number one, a hypothetical can be based on evidence which is not even admissible. Two, a hypothetical does not have to include all the facts and number three, the very purpose of the opinion is to tell us what these sense impressions were and it lies within the discretion of the Court and the Court can permit leading questions to "develop the case." So the objection is overruled and you may proceed.

A. I think that the nativity scene is a very powerful religious symbol because it is a symbol of worship. Unlike the secularized dimensions of the Christmas [27] celebration the trees, Christmas trees, lights, reindeer, Santa Claus, the nativity scene is clearly a symbol of the worship of Jesus. My concern is that when young children who would be very attracted by the

display, $1,500 worth of candy and everything else, that's the intent of it, when they go in to such an environment they are totally open to that environment, it's magical to them. They don't think about it, they simply experience it so that the impressions that are made on the child and under those circumstances are very, very vivid. That's what makes it fun and that's why parents like to do it. The problem with such a symbol as the nativity scene for someone who is not Christian, either is a non-believer or is of another faith, is that in seeing that it raises profound questions for that child insofar as whether or not he is okay or more importantly and as part of that whether his parents are okay because unlike a nativity scene in a churchyard where a child might ask what that is and the parents can say that's the symbol of the worship of Jesus which is a part of this Christmas celebration, that's what it's celebrating in part, in a public setting the question has to be raised for the child as to whether they are in fact part of the culture represented. I think the response to this suit in the [28] paper which I've been reading and the letters to the editor visibly illustrate just how important, how symbolically important the nativity scene is to folks, how dearly they hold it. Santa Claus, Christmas trees, even gift giving, are done in non-Christian families, in non-believing families all over the country, everybody has a Christmas vacation but the nativity scene has a different aspect and different dimension.

Q. Are you testifying that the nativity scene seen, if publicly supported, by a child who did not come from a Christian family is going to evoke a conflict of some type in that child? A. Yes, it evokes a sense of identification problem. Who am I, you know, what do I belong to, am I part of this country or am I part of my family and is that in conflict.

Q. How about adults, do you have an opinion as to what effect such a symbol might have on an adult who did not believe in the Christian religion? A. Yes, I believe it encourages a religious chauvinism. For an adult to see such a symbol reinforces an already prevalent attitude in our country that we are

a Christian country. We recently heard that on the radio that we are a Christian country and it's only a step from there to believing that therefore other religions [29] and people who are of other persuasions are somewhat less important and have less merit so it encourages people who already confuse being American with being Christian. It makes that confusion more difficult for them to see.

Q. Is that elated to identification also? A. Yes, in the other way, in a positive way, that is, they identify themselves as Christians.

Q. Okay, so you're testifying as to a person who does believe in that symbol? A. Yes, I think that's where the problem would be more with adults I think. Adult non-believers are perhaps insulted by it but I don't think they're profoundly affected by it.

MISS BLANDING: I have no further questions, Your Honor.

(Recess taken—court reconvened.)

Cross Examination by Mr. McMahon

XQ. (By Mr. McMahon) Dr. Werle, I believe you testified you were a clinical psychologist, is that correct? A. That's correct.

XQ. Have you in your practice treated any child who has seen the nativity display at Hodgson Park in Pawtucket? A. I don't know.

XQ. Has the nativity scene at Hodgson Park in Pawtucket [30] been the subject of any of your clinical experience? A. No.

XQ. Then your testimony with respect to the symbolism is not based on your clinical experience, is that correct? A. No, that's not correct. The nativity scene is a symbol regardless of what shape or form it takes.

XQ. But this is a theoretical conclusion, is it not, and not one based on your treatment of individuals who have seen this

particular display, isn't that true? A. No, I've had much experience treating people who have religious confusions and identification problems related to it.

XQ. Well, let me get it clear. Have you treated any patient who has expressed to you in any way experience with the nativity scene at Hodgson Park in Pawtucket? A. Not at Hodgson Park in Pawtucket.

XQ. So that as far as the Pawtucket city display is concerned you have no direct clinical experience, is that correct? A. That's correct.

XQ. So that your testimony concerns the effect of symbolism in general and in locations other than Hodgson Park upon individuals who have not been exposed to the display that's the subject of this case, is that correct? [31] A. That is not correct. My testimony relates to the effect of the creche, the nativity scene, and the potential psychological consequences of that scene in a public area, that's what my testimony is about as I understand.

XQ. Well, that would apply to a department store, wouldn't it? A. No, because a department store is a private setting.

XQ. And a seven year old child would know that? A. His parents would and he would ask.

XQ. Well, his parents would have to tell him that, would they not? A. I'm sorry, I don't—

XQ. The parents would have to explain to the child the differences between a public setting and a private setting, isn't that so? A. Sure.

XQ. The child seeing a nativity scene in a department store or in a church yard or in a city hall area would not know the difference? A. But would ask.

XQ. Oh. A. He would be taught.

XQ. A child who had not been exposed to the New Testament, who knew nothing about the story of the birth of Christ [32] and who observed a baby in a crib, some in-

dividuals bending over the baby and some animals would ask the parents as to what the significance of that was, is this your testimony? A. Yes, I don't think it's possible to be a child in the United States and not ask questions about the Christian religion and its symbols. As soon as the child goes to school the child is exposed to, if we we're talking about a non-Christian child, he's exposed to children that in all likelihood are Christian and this raises questions in his mind as to what this is all about.

XQ. Well, what about the Christmas stamp that has the Madonna and child on it that the postal department puts out, the child would see that, is that a religious symbol? A. It is a religious symbol, I think it's unlikely that a child would be captured by it though, it's not designed to catch his attention.

XQ. What's the difference between the Madonna and child on the postage stamp attracting a child's attention and a display of a baby in a bed, some people around it with some animals, what is the distinction between those two symbols as far as inviting the attention of a child is concerned? A. The difference is that when you accompany the nativity [33] scene with $1,500 worth of candy and an enormous like display as well as a Walt Disney character or characters, etc., etc., that the child's going to pay attention to that whereas a postage stamp will only remotely interest him if he collects stamps.

XQ. Dr. Werle, isn't it a fact that if Santa Claus is giving out candy and there are Disney characters and a lot of lights a seven year old child is unlikely to even notice the nativity scene, isn't that a fact? A. I think not, I think he'll notice every detail there.

XQ. If Santa Claus is standing 50 feet— A. (Continued) I'd like to add, may I add to my answer. It has to do with perception and how perception works. When our attention is aroused our perception becomes much sharper. This is true of all of us, that if our attention is aroused we notice things in

much greater detail. For a child to be involved with the Pawtucket display, the lights, Santa, everything that is just absolutely seductive to the interests of a child the child will notice every part of it and will remember it for a long time, particularly if that child is three, four or five years of age. It will make indelible impressions, there's no question about that.

XQ. But if Santa Claus is standing a hundred feet away from where the nativity scene is passing out candy, the [34] child is likely to go over to Santa Claus and not even be in the immediate vicinity of the nativity scene, isn't that a fact? A. It seems to me the child would be involved wherever his parents go with him in the park.

XQ. And the child would get no effect whatever from the symbol unless he or she asked a parent, is that your testimony? A. No, that isn't my testimony. I think the child will remember what the display is, what the scene is, will see it as a confusing scene until it's explained to be a scene of worship, then he'll understand, that will make an impression.

XQ. Why would a baby in a bed with some people bending over and some animals be confusing to a child? A. It's very confusing if you don't understand the worship dimension of it. Why are these people doing this?

XQ. Well, it becomes confusing only if you know there's a worship dimension to it, isn't that a fact? A. Yes, and I think the display itself connotes that.

XQ. It doesn't connote it to someone who doesn't know there's a worship dimension to it, Dr. Werle, isn't that it? A. My opinion is that it would either do that or would cause one to question, to find out. None of us like ambiguity, children included, and they will find out what is it, what it's about.

XQ. But it becomes ambiguous only because of the worship dimension, correct? A. Yes, that's what makes it ambiguous if you don't know, if you don't understand what it is.

XQ. But if you don't understand there's a worship dimension to it then it's not ambiguous? A. No, it is because it doesn't make sense in any other dimension. Why would you have these, why would you have such a scene? Most children understand babies being looked at through glass, you know, glass partitions in hospitals, not in mangers with people kneeling before it and in obviously some sort of super important way.

XQ. Aren't children accustomed to seeing pictures of babies and cows and sheeps and adults? A. Children are accustomed to seeing babies with cows and sheeps and adults.

XQ. I said aren't children accustomed to seeing pictures and figures of cows and sheeps and babies? A. All together you mean? Because that's what we're talking about, the scene is all together. That's what makes it ambiguous.

[36] XQ. Well, a sheep is not a symbol of worship, is it? A. No, it's not as far as I know.

XQ. A cow isn't a symbol of worship? A. In some cultures it is.

XQ. Is it a symbol of worship in this culture? A. No, it's not.

XQ. Is a king a symbol of worship? A. Is a king a symbol of worship?

XQ. Yes. A. Hopefully not. Sometimes they become the object of worship which is something we're trying to get away from.

XQ. Is a make-shift stable representation held up by hockey sticks a symbol of worship? A. Not in and of itself.

XQ. Is a baby in a bed a symbol of worship? A. Only to his parents.

XQ. Is an adult kneeling, bending over a baby either kneeling or otherwise toward the baby a symbol of worship? A. Not if he's changing his diapers.

XQ. So that your testimony is that the symbolism arises only from the collective impression, is that correct? A. Yes, I believe that entirely to be true.

XQ. The only way the symbolism has meaning is in a total context, is that what you're saying? [37] A. Yes, that's what's called a creche. It's called one thing.

XQ. So that for purposes of symbolism it's inappropriate to separate one element in a total representation from another element, is that your testimony? A. I'm not sure I understand that question.

XQ. Well, you're saying, are you not, that the sheep becomes a religious symbol only by putting it in context with all of the other figures and by giving to it the worship dimension of the New Testament story, is that correct? A. I'm saying that the creche, the nativity scene which has a number of parts to it is the symbol, is a religious spiritual symbol of worship.

XQ. And it becomes a symbol only as a total integrated display, correct? A. It is a symbol, it is a symbol as a display, that's correct.

XQ. But no single piece of it is a religious symbol? A. Not separate from the others. If you had a sheep sitting there I dont't think that would cause anybody any confusion, no.

XQ. So where we have a display the symbolism derives from the total impact of the display, right? A. And how they're related to each other, that's important [38] too. That is, you know the creche is related in a very clear way of humans worshipping a baby.

XQ. And Santa Claus would be related to a wishing well, correct? A. Santa Claus is related to gift giving.

XQ. The kings in the nativity scene are related to gift giving too, aren't they? A. Yes, in the New Testament.

XQ. As a matter of fact, as far as worship elements are concerned the kings are a symbol of giving gifts to the child, correct? A. Yes.

XQ. And the whole practice of gift giving at Christmas derives from the kings in the nativity scene, correct? A. Well, I'm not sure that that is true. I think Christmas is a combination of historical events that were brought together, pagan rituals and so forth.

XQ. Well, didn't the gift giving practice at Christmas derive from the symbolism of the kings giving gifts to the child, isn't that the heritage? A. I don't know. I don't know if that's the only explanation for that.

XQ. You don't know where the gift giving practice at Christmas derived from, is that your testimony? A. Yes, that's my testimony.

[39] XQ. Now children are exposed to religious Christmas displays constantly in their normal daily life on the way to and from school and at play, religious symbols on private residences and church and private buildings, isn't this true? A. Yes.

XQ. And a child who happened to pass six church properties on the way to school would be exposed to a variety of religious symbols, is that not correct? A. That is correct.

XQ. Would all of those symbols have the effect that you have testified? A. They would stimulate his curiosity. The issue here is once their curiosity is stimulated what is the explanation to say to a child to explain religious symbols as they are offered by the various churches in our community is not to bring any harm to the child, that isn't confusing. The confusion is when that display and when that symbol is a public and governmentally sponsored entity, then it raises the issue are we not Americans.

XQ. But an eight year old child knows whether that manger scene is on public property or private property, is that your testimony? A. If he doesn't he'll find out.

[40] XQ. He'll find out if he asks his parents? A. Yes.

XQ. His parents would have to tell him the distinction between public and private property, would they not? A. Yes.

XQ. If the parent didn't say to the child that there was a distinction between governmentally owned property and private property the child would never know that, isn't that so? A. Well, that's probably true.

XQ. So that the distinction you are referring to between public property and private property arises only if someone explains that distinction to the child, isn't that correct? A. That's right, if the child is raised in Russia that distinction probably wouldn't be that clear.

XQ. So the assumption for your testimony is that if a child looking at the nativity scene at Hodgson Park asks his parents what it is then the parents' answer is going to include a distinction between the public sponsorship and the same scene on private property, is that the assumption in your testimony? A. If I'm a Jewish child and I'm with my parents who are also Jewish and I see and I'm at the park and we've [41] gone there because we do give gifts at Christmas and we even send holiday greeting cards to our friends and so we're going shopping because we are attracted by the lights and we thought our children would like it and if I'm that Jewish child and I see the nativity scene and I ask what it is and my parents say well, that's a Christian, that's Jesus, that's the Christian Messiah, they believe that this man was God incarnated on earth. We don't in our religion believe that. The child, yes, I think the child may well ask, "But isn't this a public park, why don't we have our symbols here when we have our religious holidays? Why is that not here?" And I think the parents would then have to say I don't know.

XQ. So the substance of your testimony is the child is going to say, "This is on public property, what's it doing here?" Is that correct? A. Yes.

XQ. So the child has to know the distinction between the religious display on private property and on public property, isn't that correct? A. I think that's very important that a child know that.

XQ. Now if that same Jewish child you referred to looked at a display that had a menora in it, that child probably would not ask the parent what it was, is that correct? [42] A. Oh, no, I think the child would still ask.

XQ. The child might know that though, isn't that correct? A. Might know what?

XQ. The significance of the menora, the Jewish child? A. Oh, all right, I thought you meant would he still ask about the creche.

THE COURT: What was that last question, please?

MR. McMAHON: I'm questioning the witness concerning—

THE COURT: Let me get it from the record.

(Previous question and answer read back.)

THE COURT: If you don't mind, would you accept the question in this form; would your opinion be any different if the menora was displayed in the same location simultaneously with the nativity scene?

THE WITNESS: No, my opinion wouldn't be any different at all. Should I answer your question, Your Honor?

THE COURT: I should ask if counsel object to the question, do you object to that question, Mr. McMahon? If so, I'll withdraw it.

MR. McMAHON: No, I don't object to that question, Your Honor, I would like to add to it but I don't object to it.

[43] THE WITNESS: No, my opinion wouldn't change at all in that regard because it would simply compound the problem, that is, it would extend now to one more religion simply because it's large and has a large number of adherents. The same basic error that the inclusion of the creche makes. It seems to me that it would just be an endless process of, and what would non-believers, where would non-believers be then? What would we have for them? I don't think that would resolve the issue at all.

XQ. But isn't it a fact, Doctor, that a symbol has only such meaning as the viewer's preconception brings to it, isn't that a fact? A. Viewer's preconception?

XQ. Yes. A. No, it has meaning, it takes on meaning at the point of contact too. If I had no preconception of the sym-

bol but the symbol is confusing to me then I have no preconceptions but yet I will walk away from it affected by it.

XQ. Your testimony is that a Madonna and child is not confusing but a nativity scene is, is that correct? A. No, I did not say that. I said that a postage stamp wasn't and a public park was.

XQ. Because it is public? [44] A. Yes.

XQ. And because the individual knows that it's public. A. Because it's public and because it's designated to attract attention.

XQ. But if the individual doesn't know that it's public then that significance does not exist, correct? A. That's correct, if the individual did not understand the distinction between public and private property and lived in a culture where that distinction wasn't made it probably wouldn't matter.

XQ. So that the key to the impact of the display in this case upon the child is the fact that it's being displayed on public property, is that your testimony? A. And by including the fact that that means that it's governmentally sponsored.

XQ. Well, suppose it were on public property and it was sponsored by a private veterans organization, would that make a difference as far as the symbolism on the child is concerned? A. I don't think so because I think that the fact that it's on public property would not really change.

XQ. As a matter of fact, if it's on public property it wouldn't occur to anybody as to who owned the display, isn't that true? A. Probably not.

[45] XQ. As a matter of fact, if you walked into a public park and you saw some figurines displayed it probably wouldn't even occur to you to ask who owned the item of personal property, isn't that true? A. Unless they offended me and I'd want to know.

XQ. You are aware, Dr. Werle, are you not, of the fact that Hodgson Park is private property? A. I was under the assumption that it was a public park.

MR. McMAHON: No further questions.

Re-Direct Examination By Miss Blanding

Q. (By Miss Blanding) Dr. Werle, on cross examination Mr. McMahon asked you if you had any direct clinical experience with this particular display. Do you have any clinical experience or research experience with religion? A. Well, it's been a great interest of mine because I feel that when I deal with people in psychotherapy on the issues of spirit and spiritual choices are very important to people and that's brought me very close I think to the close connection between religion and religious symbols, the practice of religion and personal identity.

Q. Now with regard to public support or knowledge by a child that this was a public display, are you aware that the Mayor held a press conference at Hodgson Park? [46] A. Yes.

MR. McMAHON: Objection, Your Honor.

THE COURT: No, overruled, she can ask if he's aware of it. Answer that yes or no, are you aware of it?

THE WITNESS: Yes.

Q. And are you aware that he erected a podium and had some caroling there? A. Yes.

Q. Do you have an opinion as to whether this would create an impression of public support in viewers or people who read about it or heard about it?

MR. McMAHON: Objection, Your Honor.

THE COURT: Mr. McMahon, this is opinion evidence of an expert. I think I told you it can be based on inadmissible evidence. If he says "I read a newspaper to that effect" it would be admissible as part of an opinion. Overruled.

A. Yes, it's my opinion that the Mayor's press conference was part of a process which I think I'm very alarmed with in terms of what it does to people emotionally and psychologically, that is this, by identifying, by a public figure identifying himself as a champion of the specific religion it's very divisive to the community because it brings out fears in people, real fears for [47] instance that Christmas, for instance, is becom-

ing so secularized that it's lost its spiritual meaning. That's a very heartfelt feeling that people have who are Christians and who practice that and it's very hard for them not to identify with that kind of presentation on the part of their elected officials because they feel that and it makes it hard for them to see that they live in a land in a culture that guarantees the right to the expression of freedom and protects that right by making it off limits to government and government officials and it is divisive. The letters to the editor that have come out of all of this clearly illustrate this.

Q. And if the Mayor, as a part of that press conference, invited children to join in the caroling and lead the caroling at the microphone do you have an opinion as to whether, do you have an opinion as to whether they would perceive that as public support for the nativity scene? A. Well, I think I would see it as public support for a Christian celebration.

Q. And would they have to ask someone before they would understand that? A. No, I think if they're old enough to be singing carols with the Mayor they're old enough to know, you know, [48] they understand on some level or other what they're involved in.

Q. Okay, without having to ask their parents, "Is this publicly supported?" A. I think without having to ask their parents that, yes.

Q. Now you indicated that you had seen the area in which the display was located, is that right? A. That's correct.

Q. And again with relationship to knowledge of public sponsorship, do you have an opinion as to whether perceiving the whole display area in the area that it was set up next to or down the street from the City Hall and Slater Mill, and in that park area, whether that would create a presumption of public sponsorship or not in an individual viewing it? A. I can only describe—

MR. McMAHON: Could the question be read back, Your Honor.

THE COURT: Certainly, read it back, please.

(Previous question read back.)

MISS BLANDING: An individual viewing it.

THE WITNESS: I can only, I can describe what my reaction was as I came to it. I found it, you know, very attractive and made the assumption that it was a public display both because of its proximity [49] to City Hall and becuase of its size. Private organizations just don't in my experience seldom put on that kind of a display unless it's a LaSallette Shrine or something like that so my opinion, it was clearly a public display.

Q. And do you have an opinion as to whether a child who normally frequented the area, the park area I mean, Hodgson Park, might perceive it to be a public area or a private area?

MR. McMAHON: Objection, Your Honor.

THE COURT: He may answer.

A. Parks I think are generally perceived to be public especially when they're in close proximity to public buildings and they're, you know, downtown.

MISS BLANDING: I have no further questions.

Re-Cross Examination By Mr. McMahon

XQ. (By Mr. McMahon) So that a child would perceive Hodgson Park to be a public area would be wrong, right? A. According to what you said, it was not a public area, yes.

XQ. Now you said that in answer to Miss Blanding's question that the Mayor's press conference would connote the support of Christian religion, right? A. Yes.

XQ. Are you aware that at that conference the Mayor [50] announced an intention to include a menora in next year's display? A. Yes, I am aware of that.

XQ. So that the announcement that the menora was to be included next year connotes sponsorship of a Christian religion, is that correct? A. As far as I'm concerned, yes, that is correct.

XQ. If a child perceives somebody he knows to be a public figure entering church in your view is that an unhealthy public sponsorship of religion? A. No, it is not. It demonstrates, I think, to me and I think to that child that in our country even public figures have a right to their own personal expression of their religious beliefs guaranteed.

XQ. And what age child would be likely to make this distinction? A. When would a child be mature enough to begin to make those distinctions?

XQ. Yes. A. Oh, around five.

XQ. Now I believe you said that the impression of public sponsorship in the Hodgson Park area would derive from the fact that it was in close proximity to City Hall and that it was in close proximity to Slater Mill area, is that correct, is that what you said? [51] No, I said because it was in close proximity to City Hall and because of the size of the display itself.

XQ. The size of the display—so that that impression derives from the proximity of the City Hall and the size of the display, is that correct? A. For me, yes.

XQ. So that if the Slater Mill Museum Association had sponsored this display then there would still be an impression that it was public sponsorship, is that correct?

MR. DeLUCA: I object.

THE COURT: Overruled, go ahead.

A. If it was that size I would think so, yes.

XQ. And again that impression would be incorrect if the Slater Mill Corporation had sponsored the display, right? A. Yes, and it would probably be good for them if it was so for the Slater Mill Association to make clear that it was a privately sponsored display.

XQ. Oh, a private individual has an obligation to set forth that it is not a public agent? A. No, it doesn't have that obligation at all but if he wanted, if a private individual wanted to make sure that there was no confusion about that he could do it or she could do it in that way.

[52] MR. McMAHON: No further questions, Your Honor, thank you.

MISS BLANDING: I have no further questions.

(Witness excused.)

MISS BLANDING: Your Honor, I'd like to call Mayor Lynch.

DENNIS M. LYNCH,
having been first duly sworn testified as follows:

* * *

Examination By Miss Blanding

Q. (By Miss Blanding) Mr. Mayor, you are the mayor of the City of Pawtucket, is that correct? A. Yes, I am.

Q. And how long have you been the mayor? A. Since the beginning of 1973.

Q. As mayor you generally oversee the directors of each department including the Department of Parks and Recreation, is that correct? A. Yes, I do.

Q. And your supervision includes knowledge of the city's Christmas display? A. Yes, it does.

Q. And you would ultimately be empowered as mayor of the city to alter or change an aspect of the display if you chose, would you not? A. In fact I have done that.

[53] Q. And since you have been mayor the city has each year erected as part of its Christmas display a nativity scene depicting the bliblical story of the birth of Christ? A. Long before I was mayor.

Q. And you intend to continue this practice in the future? A. I moved it from Slater Park downtown and publicly said I would continue it.

Q. And in fact have you not stated that next year you intend to have an even better looking manger scene? A. I certainly hope so.

Q. Now, even if this Court were to order the City not to erect a nativity scene in their Christmas display the City would

continue to have a Christmas display, would it not? A. First of all I hope that doesn't happen, secondly if it does I will appeal.

Q. Well, Mr. Mayor, assuming that it does happen you would still have a Christmas display in the city, would you not? A. I will still assume that we would be under appeal and that we would somehow have the right to continue what we have been doing.

Q. If at some point in the future, Mr. Mayor, you were not able to put the nativity scene up, would you still have [54] a Christmas display in the city? A. That is not a question that has ever been put to me before. That question runs to my oath of office and I'm sworn to uphold the law and whatever the law is in the final determination I will uphold the law.

Q. I don't think you're understanding my question. If there were no nativity scene that would be in the Christmas display you would still have other figures displayed such as Santa Claus and reindeer and Christmas trees and lights, all the other things, would you not? A. If there were no nativity scene? I don't understand your question. You better re-phrase it.

Q. You wouldn't eliminate the entire Christmas display if you had to eliminate the nativity scene, would you? A. Oh, I'd probably figure some other way to have a nativity scene as part of the historical tradition and part of the full Christmas display.

Q. If you had to remove the nativity scene this would upset you, would it not? A. Oh, I think it would upset most people.

Q. And you feel this way because you feel that it's central to the city's Christmas experience, haven't you stated that? A. Central for three basic reasons, cultural and tradition, [55] aesthetically and to the economic well being of the community and accessibility that relates to all three of those reasons.

Q. It is also personally central to your Christmas experience, you also stated that? A. Well, it depends now whether you're going to ask me a question objectively as Mayor and my sworn duty as Mayor or subjectively as Dennis Lynch as an individual. I suppose another person serving as Mayor subjectively might feel differently than I do.

Q. Mayor, haven't you also stated that the nativity scene is central to your personal experience of Christmas because of your mother taking you to view the nativity scene when you were a child and your own religious beliefs? A. I don't know what you're quoting from but I'm here under oath and it seems to me that in the context of your talking about that I was quoted and I did say that I thought that Easter was much more important to me personally, that if Christ hadn't risen everything would have gone for naught.

Q. After this suit was instituted, Mr. Mayor, didn't you hold a press conference at Hodgson Park? A. Positively.

Q. And you had a podium erected in the park? [56] A. Yes, one of those small things that can be moved from place to place quite easily.

Q. And that podium was erected in front of the nativity scene, was it not? A. As I remember either right in front or aside of.

Q. And as part of that press conference did you not lead the viewers caroling? A. Not very well but I did.

Q. And did you not also invite school children who were present to lead the viewers in caroling? A. No, I didn't and I think you're under the wrong impression. Those children that were there happened to be in the downtown area, as a matter of fact they were in the lobby of City Hall where they come every year. They are slow children in our school system who come down and receive some candy from Santa Claus in City Hall. They were on their way to get some ice cream and went by that public conference and stopped.

Q. Did they not also participate in the caroling? A. I think so, I think everybody did. It was a happy time.

Q. But you invited them up to the podium to lead in the caroling, did you not? A. No, I didn't.

MISS BLANDING: If I may have a moment.

(Pause)

[57] Q. Mayor Lynch, I would ask you if this is not correct: "Stepping aside from a small wooden podium Lynch began holding the mike in front of the faces of several school children who began to lead in the caroling." Is that correct? A. I stepped into the crowd so that everybody could be heard over the hand mike that I had, everybody wanted, you know, to sing and I stepped through the crowd. I asked nobody to come up to the podium and join me outside of Santa Claus, he joined me.

Q. Now Mayor Lynch, I believe that you've indicated that you've received numerous phone calls and communications regarding people's feelings about the nativity scene and about this court suit, have you not? A. Never received one until I was sued and I have received numerous since.

Q. How many phone calls would you say you have received? A. I would estimate of those that we kept a record on probably 75 to 100 in the office, I don't know how many at home, a number at home. My home phone number is also listed and also a great many of written communications from a wide area, beyond Rhode Island.

Q. Did you bring those written communications with you today, Mr. Mayor? A. We have them, the attorney has them.

[58] (Documents handed to Miss Blanding.)

MISS BLANDING: Your Honor, if I may have a moment to look at these.

THE COURT: Certainly.

(Pause)

Q. Wouldn't you say that your impression of some of these letters and telephone calls were that they expressed the individual writer's or caller's religious views? A. I think what the communications represent that I received verbally, whether it be by telephone call or by any of those letters that you're looking at was an outrage over the suit that was brought against us.

Q. But wouldn't you also say that some of them expressed the view that the nativity scene was a religious symbol which you were supporting? A. I think that part of the shock and the outrage over the suit brought people to express their views and somewhat varied as to why that tradition should continue.

Q. Wouldn't you say, Mr. Mayor, that for instance this card, "Dear Mayor Lynch, God bless you, I admire your stand on the nativity display. I thank God for men like you," and then a quote from Isaiah, "No weapons formed against me shall prosper," expressed the person, expressed the fact that the person feels that this is [59] a religious issue? A. I think it was very nice of the person to send me that card.

Q. Or that a card which says, "Thank God for a good Catholic mayor like you. Bless you and yours," would express the fact that this person is viewing this as a religious issue? A. I put that in the same category as the Jewish community supporting me in Pawtucket.

Q. Would you agree that some of these responses express the view that this was a majority point of view and therefore should remain as opposed to a minority point of view? A. Not as opposed to minority, I don't think you'll find anything in there, and none to my recollection certainly that anybody considers that as doing anything adversely to any minority. Every expression that I have received had been a positive one and a questioning why anybody would enter into a challenging of what has been a very joyous occasion for all people.

Q. How about a letter that says, "I applaud you, it's time that someone with courage stood up to the few who want to dictate to the majority as to what they cannot celebrate and revere in the way that they wish to." Wouldn't that indicate to you that that person felt [60] this was a majority position and therefore should be maintained? A. I think that's indicative of people who express their view to me that they had made the simple assumption that this would always be there because it was a good thing and they're outraged again over the questioning of what is good for all.

Q. Did you receive as one of the communications a letter from the Knights of Columbus, Pope John 23rd Council 5498? A. Where are they located?

Q. Midland Park, New Jersey. A. If it's part of our communications I certainly received it.

Q. And do you recall the expression in that letter indicating that this is a religious issue? A. I don't recall, my recollection of that letter was that it was quite a lengthy one. I think you have to keep in mind that I did not solicit any of these letters and the record shows that you have no letters before the institution of the suit.

Q. Mr. Mayor, what I'm asking you about is not whether you solicited the letters or when they were sent to you but rather what people perceived the nativity scene as? A. I know, I just thought I'd make that clear.

[61] MISS BLANDING: Can we go back to my question, the last question before.

THE COURT: Read the quetion again, Mr. Spertini.

(Previous two questions read back.)

A. No, I don't. My only recollection, as I stated to you, is that that particular letter was rather a lengthy one. I cannot possibly remember with all the communications what one, that's possibly only a part of a sentence too, you know, is in a particular letter.

Q. Mr. Mayor, from the first paragraph of that letter, "that during this most holy Christmas season the atheists and American Civil Liberties Union are most active in their endeavors to destroy all those things that we as Christians hold closest to our heart and souls, our beliefs in the birth of our Lord and saviour Jesus Christ," wouldn't you say that that expresses a perception that the nativity scene is a religious symbol? A. No, maybe to that particular person but my goodness, people are entitled to their views as I'm entitled to mine and there was a wide and varied expression of opinion in all communications and I stated that previously to your question.

Q. But you would agree that many people view the nativity [62] scene as a religious symbol? A. Are we talking about our Christmas display?

Q. No, Mr. Mayor, I'm talking atout the nativity scene. A. Well, how in the world would I know how, you know, everybody feels. All I know is that for the forty years that I can testify to it has been a joyous occasion for all people in the community to participate in. Now I assume that's many people. I assume that that's the majority of people that have been happy and I do that based upon some reliance upon the fact that nobody has quetioned it until this time.

Q. I'm not asking you with regard to whether it makes people happy, Mr. Mayor, I would say wouldn't you say it would be reasonable to assume that many people view the nativity scene as a religious symbol? A. Well, I mean, I'm well aware of people including a Jewish friend of mine who took his three youngsters down to see the display so how would I know what people, you know, what their particular or individual reasons are for enjoying the display.

Q. Do you have an opinion as to whether many people or some people would view it as a religious symbol? A. I don't think they'd look at our Christmas display as a religious symbol.

Q. I'm asking you about the nativity scene, Mr. Mayor. [63] A. And I put up a Christmas display not just a nativity scene.

Q. Mr. Mayor—

THE COURT: I don't like to interrupt but there's a little notation I made on my notes, there was a question asked which I didn't hear the answer to or wasn't answered and I'd like to put it again and this is, I'm trying to paraphrase the question asked by counsel, it's not one that stems from the Court, all I want is just the answer on the record. The essence of it was that let us assume that the Court renders an opinion which is appealed and of course if the appellate court states that the nativity scene can be shown that's the end of its but what if the appellate court ruled that the nativity scene could not be part of the entire Christmas display, the question was would you nevertheless have the Christmas display without the nativity scene, can you answer that for us, please?

THE WITNESS: Well, Your Honor, as you well know, I'm not an attorney, you'd have to tell me if I have a right of appeal from the appellate court for the answer to that question.

THE COURT: Well, let us assume that the whole gambit of appeals are exhausted.

THE WITNESS: Okay, that's what I tried to [64] answer, assuming the whole gambit of appeals is exhausted I have a sworn obligation to uphold the law, that's part of my oath of office which I say and take under God.

THE COURT: And does that mean then that you would have the Christmas display without the nativity scene?

THE WITNESS: Well, there are other alternatives, Your Honor.

THE COURT: Such as?

THE WITNESS: Such as the offer from the Slater Mill Association and other people to have the very display that's existing there in the very same spot and in other spots of my com-

munity. We would look at our alternatives as to what would be the best judgment to make for the overall best interests of the overall community.

THE COURT: In other words, as Mayor you would still press to fing some way to display the nativity scene?

THE WITNESS: No, I'm not saying that, Your Honor. What I'm saying is I have a responsibility to listen to the people, every two years they get a chance to respond to my ability to do that, this year included. I would have to review the situation given [65] those circumstances. I also said in answer to that question that I would hope the hypothetical question you just gave me never happens.

THE COURT: All right, go ahead, I won't press it, go ahead, Consellor.

Q. Mr. Mayor, I believe that you've indicated that your impression from the telephone calls and other communications that you received was that people were very angry over this issue, is that correct? A. Angry over the suit being brought.

Q. And did you—

THE WITNESS: It was a very divisive thing, if I might further explain your question. The bringing of the suit was a very divisive thing in the community and that divisiveness had never, and I am a life-long resident of the community, had never been seen in my community before.

Q. Didn't you also indicate that some people were critical of the city because they believed the city by its actions were trying to foster a religion? A. I had no complaints until the suit was brought.

Q. I'm not limiting the time span for the answer, Mr. Mayor. A. I'll answer whatever time span you, if you can, you know, help me with your question.

Q. Since the suit has been brought haven't you indicated [66] that some of the people who communicated to you were critical of the city because they believed the city by its actions were trying to foster a religion? A. No, and whenever I've

answered that question as it has been posed before it was only related to those involved in the suit and the ACLU. Those are the only complaints that we have heard.

Q. Did you have an interview with a reporter from the Good News Paper? A. Yes, I did, a 27 minute interview.

Q. Pardon? A. A 27 minute interview with a fine young man, I don't remember his name but there are many incorrect, well, uses of English I think is probably, because I think he did a fine overall job of reporting long interviews.

Q. And didn't you state in that interview that "I've never seen people as mad as they are over this issue. The people absolutely resent somebody trying to impose another kind of religion on them and that is not what the Constitution meant. Some are even critical of us of trying to foster a religion which we are not." A. Yes, that's the ACLU and this suit. That's exactly, if you want a clarification of my statement, that's exactly what I meant there and what I have said in other places and when I said about the fostering of [67] another religion I think the denigration, trying to eliminate these kinds of things is a step towards establishing another religion, non-religion that it may be.

Q. Mr. Mayor, you wouldn't say that the people who became angry over this issue viewed it as— A. As a matter of fact, I quoted Network in that same paragraph, didn't I?

Q. May I finish the question, Mr. Mayor. A. I thought you had.

Q. No, I hadn't. Wouldn't you say that the people who expressed this great anger that you perceived over this issue were not reacting as though it were trivial but were in fact acting as though it were very important to them? A. No, there are two aspects to the reaction of people to that. They thought it was frivolous and trivial upon the ACLU and those who are active in bringing the suit to do such a thing. The second aspect of that is they did not consider it trivial to be questioned on what they had accepted for so many years as a good thing.

Q. So that people who became angry over this issue did not view it as a trivial matter, is that right? A. That's not what I said. I said there were two aspects to that, they thought that it was trivial, they thought that [68] it was very small of anybody to question what had been accepted by the community.

Q. So they became angry over a trivial matter, is that what you're saying? A. No, the bringing of the suit was a trivial and small part by all of those involved in it, that was the clear impression from the people.

Q. They also were stating that it is not a trivial matter to them to be able to continue tradition? A. There are two answers to that question, two aspects to it.

Q. Wouldn't you anticipate, Mr. Mayor, that some individuals might view a scene depicting the birth of Christ as a religious scene that would express their Christian religion if they were Christians? A. Then why didn't I have a complaint in all of these years.

Q. Mr. Mayor, would you answer the question? A. No, the answer is no, I don't. I have no knowledge, if I understand your question and I'd like to have the question read back, Your Honor.

THE COURT: Certainly. Read it back, Mr. Spertini.

(Previous question read back.)

A. Well, I mean, that sounds like a couple of questions to me. If you'd like to re-phrase it I'll attempt to [69] answer it.

Q. Mr. Mayor, wouldn't you anticipate that a Christian person viewing the nativity scene might see it as an expression of the birth of Christ and as part of his or her religious experience? A. I think it's more likely if they're like me with seven youngsters kind of trying to figure out where they all are in line to collect candy from Santa Claus and I don't think the average person looks at our Christmas display as a religious experience, no.

Q. You wouldn't say that it was reasonable for a Christian who believes the biblical story of the birth of Christ to see the

nativity scene as part of his or her religious experience? A. Well, in order to answer your question I have a great deal of difficulty in separating any part of, I mean my goodness, if someone were just to look at the Disney characters they may think that I'm Walt Disney running the city of Pawtucket.

Q. Mr. Mayor, I'm not asking you about the Disney characters, I am asking you wouldn't you anticipate that a Christian person viewing a navitity scene, including your nativity scene, might view it as an expression of the birth of Christ as depicted in the bible and as part of their religion? [70] A. If that person happened to believe that way wherever they would see a nativity scene I suppose that would be true.

Q. And if that person were of the Christian faith might they not revere such a scene? A. Well, I think that ties in with your earlier question, if that's what a particular individual believes wherever they see a nativity scene I would think that they would revere it.

Q. Do you find such a response reasonable? A. For people to believe in something and revere it, yes, that's reasonable.

Q. For people who believe that the birth of Christ is part of their religion to revere a nativity scene and in particular the nativity scene in Hodgson Park? A. I haven't seen anybody holding any services or revering so I don't know what your definition of revere is.

Q. Mr. Mayor, have you responded to any of these letters? A. Not yet, I hope to respond which is the normal course of business in my office.

Q. And how do you intend to respond to them? A. Usually in particular when you're involved in issues like this because of the amount of work being the chief executive of the city it's usually a simple note [71] acknowledging the fact we have received the communication.

Q. Mr. Mayor, are these the communications which were addressed to you in your office that you brought in to court today in response to the subpoena? A. They appear to be.

Q. And are these all of the newspaper articles which you or your office found relating to this issue in the suit? A. They appear to be.

MISS BLANDING: I would like these marked as Plaintiff's Exhibits No. 11 and 12.

THE COURT: Any objection to these, Mr. McMahon?

MR. McMAHON: No, Your Honor, I didn't hear the numbers.

THE COURT: 11 and 12, no objection, they may be marked.

(Plaintiff's Exhibits 11 and 12 marked in evidence.)

Q. Mr. Mayor, is this the report of your interview from Good News Paper? A. That appears to be.

(Pause)

MISS BLANDING: Can I see 12.

THE COURT: I must say, I'm a bit confused, what are we doing, are you offering that, are you [72] objecting?

MR. McMAHON: No, the document is in there, Your Honor, it's already been introduced. We understand that it's part of the package.

THE COURT: Well, then we don't want it in twice, do we.

MISS BLANDING: No, I just wanted to make sure the article was there. I didn't see it when I looked through it before, that's all.

THE COURT: Okay.

MR. McMAHON: If it isn't it was supposed to be in there.

THE COURT: Tell me, Mr. McMahon, do you object to that newspaper?

MR. McMAHON: It's there.

THE COURT: Okay. When you did not object you were aware that it was part of the evidence?

MR. McMAHON: Yes, it's part of the file that the Mayor maintained, on that ground I have no objection.

THE COURT: Now wait a minute. If you don't object that's a piece of evidence that's in for all purposes.

MR. McMAHON: That's correct, Your Honor, I understand that.

[73] THE COURT: All right.

MISS BLANDING: Your Honor, this is a record of some telephone calls, that was part of that packet which is already introduced which I inadvertently left out.

THE COURT: All right.

Q. Now Mr. Mayor, you have also indicated that next year you intended to erect a menora in the Christmas display in honor of our Jewish brethren who supported you, is that not right? A. Well, that's not the full reason as to why I believe the quote ran, where is that quoted from?

Q. I believe from both the Pawtucket Times and the Bulletin. A. That's an incomplete reason but yes, I said that I would put up a menora.

Q. But did you say that it would be in support of— A. No, that's not a correct quote.

Q. You never said that? A. No, what I said was, as I remember it and certainly how I feel today and I will state under oath that I'm sorry I didn't think of that before, I think that that is a very important thing to have as part of, as other communities have done and that I intended to make that part of our display next year.

Q. Wouldn't you say that the menora is a symbol of [74] Judaism? A. As I understant it but it's much more than that in my opinion and that was why I said that I would put it up and I think for the very reasons that others have, that it's part of our culture, tradition and an historical fact.

MISS BLANDING: No further questions.

THE COURT: Do you want to question the Mayor now, Mr. McMahon, or do you plan to call him at some other point?

MR. McMAHON: Well, Your Honor, since he is not going to be able to be here tomorrow if it's not imposing on the Court I would—

THE COURT: I will authorize it if that's what you want.

MR. McMAHON: I would like to do it.

THE COURT: Do you want to go right on or do you want a short recess?

MR. McMAHON: Well, it may be somewhat extended so a short recess might well be in order.

THE COURT: All right, we'll take a short recess.

(Recess taken—court reconvened.)

Cross-Examination By Mr. McMahon

* * *

XQ. (By Mr. McMahon) Mr. Mayor, some of the items that you [75] have been questioned about, prior to the press conference to which you have testified has there ever been a press conference at the Hodgson Park Christmas display before? A. No, sir, there hasn't.

XQ. And I will ask you whether the subject of the press conference was the lawsuit in this case? A. Yes, it was.

XQ. I believe you testified that the city has owned the nativity, has displayed the Christmas display including the nativity scene for approximately 40 years? A. To my knowledge so I'm told that that goes back before then, but I mean I can remember it.

XQ. Prior to the institution of this lawsuit are you aware of any letter to the editor being written to any newspaper concerning a nativity scene? A. No, sir.

MR. DeLUCA: I object.

THE COURT: I'll let the answer stand.

XQ. And I believe you testified in response to questions from Miss Blanding that you had never received a call concerning the nativity scene in this display until this suit was instituted, was that your testimony? A. Yes, sir.

XQ. I believe in answer to a question of Miss Blanding's [76] you referred to some comments as being in the same category as

the support of the Jewish community, will you please explain that statement, Mayor? A. As a result of the suit being brought and communications starting to come from people who are upset over that one of the first communications was from the Jewish community in Pawtucket, in particular those connected with the new Jewish synagogue on East Avenue in Pawtucket and offering their support telling me that they considered what we had been doing for so many years to be a thing of joy and not a religious service or observance of any kind.

XQ. From your testimony, Mayor, I will ask you whether you consider that the community morale is a major factor in the sponsorship of this Christmas display? A. Yes, sir, it is.

XQ. And do you regard that as one of the principal reasons for this particular display? A. Yes, I do.

XQ. Now also clarifying questions asked by Miss Blanding and His Honor, trying to go at it from another direction, if the city lost through theft or otherwise the nativity scene and did not have the money to replace it would you nevertheless put up the city's Christmas display? [77] A. Yes, sir, I would.

THE COURT: You mean without the scene, Mr. McMahon?

MR. McMAHON: Please, Your Honor?

THE COURT: You mean without the nativity scene?

MR. McMAHON: Yes, Your Honor, I think the witness was confused concerning, relating it to the court suit. I'm just trying to approach it from another way.

THE COURT: Thank you, I appreciate the clarification.

XQ. So that, Mayor, as far as you are concerned the nativity scene is merely an element of what is, in your view, a secular Christmas celebration, is this correct? A. I consider it incidental and not the main thing of the Christmas display, not the primary reason. Therefore if what happened under your previous question were to occur, which I would of course hope that it wouldn't but if that were to occur and those were the circumstances I would go ahead with the Christmas display.

XQ. Now Mayor, in your experience both as Mayor and as a resident of the City over the years observing this Christmas display, do you know whether in your [78] experience any person

has ever visited the Christmas display for the purpose of worship? A. I'm not aware of anybody ever having done that nor any group.

XQ. Are you aware of anyone regarding the Christmas display as an object of worship? A. No, sir, I'm not.

XQ. Now in your annual arrangements for the construction of this Christmas display do you from time to time consult with groups and individuals outside of the municipal government? A. Yes, sir, I do.

XQ. And what are some of those individuals or groups? A. Starting from the time that I thought in my own mind that it would be a good idea to bring the display from Slater Park to the downtown area that consultation on a formal basis was with the Slater Mill Association and its officers and members. Since that time there's been constant communication with downtown Pawtucket merchants, Downtown Pawtucket Associates, I believe is their correct title as a group, and individuals in the area who have expressed their opinion as to what they would like to see happen with that display.

XQ. Have the downtown retail merchants expressed to you as Mayor an interest for commercial reasons in the [79] continuance of this city display?

MR. DeLUCA: I object.

THE COURT: Well, no, I'll allow it, overruled. It's based on hearsay but nevertheless I will allow it.

A. They have expressed to me directly the request for the continuation and expansion of such a display as being important to them in the downtown area.

XQ. Do you know, Mayor, who is the largest retailer in downtown Pawtucket? A. Yes, sir.

XQ. And who is that? A. That's the Apex store.

XQ. And do you know who is the second largest retailer? A. Yes, sir, that would be the Peerless store.

XQ. And where is this display situated with respect to the Peerless store and the Apex store? A. It sits between the two.

XQ. And approximately how many feet from the edge of the property line of each, from Hodgson Park to Peerless and from

Hodgson Park to Apex? A. Remembering that the Christmas display entails almost 40,000 square feet on both sides of the river and keeping in mind that Peerless is on the western side of the river, it is only across Roosevelt Avenue which [80] is an 80 foot wide street from the most westerly boundary of the Christmas display or Hodgson Rotary Park and on the other side, from the easterly, most easterly boundary of Hodgson Rotary Park to Apex is probably 100 to 160 feet, I'm not sure, but it's that close.

XQ. Now the Hodgson Park property is owned by whom?

THE COURT: May I interrupt, Mr. McMahon, while I have a thought, I wonder if counsel would be willing, not now, but at some point giving me a sketch. After the view yesterday my law clerk made up a sketch for me but we appreciate it, it's not, you know, doesn't tell us all that we want to know, but if you will all get together and give me a sketch which you could show where Apex is, the road, the land area on one side of the river, the land area on the other side of the river and this would give me a general idea of what I'm looking for.

MR. McMAHON: Your Honor, I must confess that we have a large sketch prepared by the city engineer and we left it at home. We've made arrangements to go get it.

THE COURT: Well, all right, I'd like to have it that you both agree.

MR. McMAHON: We have one that was prepared [81] by the city engineer and someone has gone to get it.

THE COURT: Something in that general idea is what I had in mind, okay.

(Document handed to Mr. McMahon.)

THE COURT: Not now, I don't mean to take time out of the hearing.

MR. McMAHON: Yes, Your Honor.

THE COURT: And it can be given at the time that you submit your post-hearing briefs and perhaps you could agree, then see whether or not you would agree that it be marked as an exhibit.

MR. McMAHON: When I get my sketch we'll confer.

THE COURT: Work it out, sure.

XQ. Now I believe you referred, Mayor, to the Slater Mill Associates, is that an exact corporate name? A. I'm not sure,

Mr. McMahon, it is Slater Mill Association, I think is probably the correct, but I don't have the real—I really don't know the correct name.

XQ. And that is what kind of a corporation, Mayor? A. That's a private non-profit organization.

XQ. And do you know what its function is? A. Yes, the primary function and reason for the institution of that was to continue the historical tradition that's so important to a blue collar, industrial city such as [82] Pawtucket. That Samuel Slater the Mill Association is named after had instituted for industrial work in Pawtucket and in fact the Slater Mill is the first cotton mill in the United States of America.

XQ. And does the city encourage and work with the Slater Mill corporation in furthering its objectives? A. Yes, sir, every year.

XQ. And does the city regard the Slater Mill complex and the operation of the Slater Mill corporation to be helpful to the general development of the downtown area of the city? A. Yes, sir, very helpful.

XQ. Now I believe in answer to a question Miss Blanding, Mayor, you said that you considered the display to, if I recall your testimony correctly, to further cultural, commercial and aesthetic purposes, was that your testimony? A. Yes, sir.

MR. DeLUCA: Objection.

THE COURT: No, overruled.

A. Yes, quite clearly, all three of those and I said that accessibility related to all three.

THE COURT: I think the three he used were cultural, traditional and economic, I'm not sure, is that correct?

[83] THE WITNESS: No, Your Honor.

THE COURT: Please repeat then.

THE WITNESS: Cultural and traditional were the first.

THE COURT: As one.

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: Aesthetic.

THE COURT: Aesthetic and economic.

THE WITNESS: And then economic and I said accessibility related to all three.

THE COURT: Aesthetic, economic and accessibility. All right, go ahead, Mr. McMahon.

XQ. Now with respect to cultural, to a cultural and traditional objective, I will ask you what, if anything, the city does or participates in during the year in terms of cultural and traditional celebrations other than Christmas? A. Well, a great many and varied things which relate directly to a community I think that over a long period of time has done a good job in redeveloping itself and the city government has played an important role in cooperation with library, Boys Club, YMCA, a great many organizations and individuals and we join in on festive occasions, July 4th, Memorial Day, Veterans Day, and [84] other celebrations particularly in the downtown area. Until the recent completion of the mall and the opening of the free parking garage downtown those were somewhat sporadic. We had joined in in concert with the business community to plan those kinds of events that I just related on a more constant and consistent basis for the promotion of downtown Pawtucket.

XQ. For the record, Mayor, will you describe with relation to Hodgson Park where the mall to which you referred is located? A. Yes, sir, we just have completed the redoing of what is now called the auto restricted zone with the Federal Government every year, it's a new name, what we commonly know as the mall with a canopy that runs from Apex store which we have referred to earlier as being an important part of the CBD, central business district, running from there westerly up Main Street all the way up to and behind at this point the Old Colony Bank as another anchor or end at the north and westernmost part of the central business district and in those areas we have poured multimillion dollars over the last few years.

XQ. And these have been Federal and local funds? A. Federal, state and local.

XQ. Federal, state and local funds? [85] A. Yes, sir.

XQ. And when was this mall officially completed and opened? A. This past summer, I forget the exact date.

XQ. And in addition to the holiday celebrations to which you have referred have you had in the past and do you plan for the

future other seasonal activities in and around this entire mall area which you have described? A. Yes, because aesthetically it is a very pleasant place to be which was one of the aims as I stated so that we have a number of events that we will hope to hold including Hodgson Rotary Park with the continued support of the Slater Mill Association, activities on the land that we use for Christmas display.

XQ. And would you describe specifically what some of these activities are? A. Yes, we have ethnic related activities and encourage people of all ethnic backgrounds to join in with us in the celebration of their heritage in a food kind of carnival or display.

XQ. And this is an ongoing effort throughout the year? A. In conjunction with the merchants in order to continually promote the rejuvenation of the city.

XQ. And do you regard the Christmas display as simply one component in this ongoing effort with respect to the [86] downtown area? A. Clearly. That was the reason that under this administration I made the decision to move it from Slater Park to that area.

XQ. In other words, the movement of the Christmas display to the downtown area was part of the overall development of this particular area involving the expenditure of all the funds to which you've previously referred? A. Yes, sir, that was my decision and that was when it was done.

XQ. And each year when you, in scheduling the opening of this Christmas display, do you coordinate your efforts with the merchants in the downtown area? A. Yes, sir, we do, we're in constant communication with them during the year and for that particular seasonal thing we try to dovetail our activities so that it coincides with promotions that they are running on their own for the Christmas season.

XQ. And do they have Christmas decorations in their own stores which are in this immediate area? A. Yes, sir.

XQ. Mayor, to save time, I'll ask whether under your direction a sketch was prepared by the city engineer of the Hodgson Park Christmas display? [87] A. Yes, sir, it was.

XQ. And whether arrangements are now being made to bring that into court?

THE COURT: It just came.

A. Yes, sir, just, I think it just came.

(Pause)

THE COURT: Really, I don't see the need to be concerned about that at the moment. I've been there, I viewed the scene. I would suggest that some time before the briefs are submitted that you get together and give me a sketch. In other words, I would assume the discussion there is about the accuracy of the sketch, is that correct?

MR. McMAHON: No, Your Honor, it's not drawn to scale, it's just a description of everything that's there and it shows the area.

THE COURT: I see. Well, I don't know whether it has to be drawn to scale if you agree, if you put the dimensions in so that we'll know.

MR. McMAHON: The dimensions have been testified to by Mr. Dufault.

THE COURT: Well, it would help me. Let me explain to you what I have in mind. It's obvious that the opinion the Court writes will have to describe this area and for the convenience of the reader it is [88] sometimes very, very helpful to attach to the opinion a sketch of what we're trying to describe and it would be a big help to the Court if you just got together, made one in the size of the regular, not legal paper, but, you know, the size paper that I write opinions on and type them on and agree as to the areas, like so many square feet in the area, I think it's on the west side of the river, and square feet area on the other side, the Apex store, the distance as the Mayor stated.

MR. McMAHON: Your Honor, we will—

THE COURT: Eighty feet from there and the Christmas tree and the feet to the creche I think was 25 feet and all that sort of thing.

MR. McMAHON: We will arrange this to be done by the city and we will afford full opportunity for the plaintiff to view it.

THE COURT: Make it to size so that I can take it and have a photocopy made and appended to the opinion if I feel it's necessary, okay?

MR. McMAHON: Correct, Your Honor.

XQ. Just for what it's worth, Your Honor, Mayor, I'll ask you whether this, this document which I am showing you is the sketch which you have prepared? A. Yes, sir, it is.

XQ And whether that sketch shows all the elements of the [89] Hodgson Park Christmas display? A. Yes, sir, it does.

MR. McMAHON: Your Honor, I will ask that this be marked as an exhibit.

THE COURT: Any objection?

MISS BLANDING: No objection.

THE COURT: It may be marked.

THE CLERK: Defendant's Exhibit D.

(Sketch marked Defendant's Exhibit D.)

XQ. Now Mayor, there was some testimony yesterday concerning the bus stop on Roosevelt Avenue which at the moment is on one side of the Hodgson Park area, I will ask you how long that bus stop has been in that location? A. About two years.

XQ. And prior to that where was that bus stop? A. On Main Street when Main was still open, it was not an auto restricted zone.

XQ. And was Main Street in the immediate area of Hodgson Park? A. Yes.

XQ. Now who controls the location of the bus stop? A. The Rhode Island Public Transit Authority.

XQ. And the city has not control over that? A. No, as a courtesy they consult with us, inform us as to, [90] you know, what their surveys show and what they intend to do and we have some input into that but it's their decision.

XQ. And as a matter of course from time to time dealing with bus stops throughout the city do they customarily change them? A. Yes, this one we were told was done on a temporary basis until the work of the auto restricted zone was

completed, that they would review their findings at that time and make a decision, so I mean they could move that tomorrow.

XQ. Mayor, there's been some testimony with respect to the expenditures the city has made on public holidays, specifically except for the Christmas display, we've had testimony concerning the 4th of July display, do you know what other holidays the city expends money for public celebrations? A. Veterans Day, Memorial Day are the main ones.

XQ. And the activities involve what? A. The activities usually involve our support of necessary spending of money to get bands, floats and that kind of activity for parades.

MR. McMAHON: No further questions, Your Honor.

THE COURT: Any further questions, Counsellor?

[91] *Re-Cross [sic-Redirect] Examination By Miss Blanding*

Q. (By Miss Blanding) Mr. Mayor, I believe you indicated that you felt that one of the important aspects of the Christmas display was that the display promoted morale in the community? A. In my judgment, yes.

Q. Would you not also say that the Christmas display without a nativity scene would also promote morale? A. Well, I think I answered to try to clarify the earlier question that for some reason the nativity scene could not be put up by the city I would still go ahead with the Christmas display.

Q. And would you feel that it would still promote morale? A. I would assume and hope that it would and I say that because I have said as clearly as I can in answer to your questions that the nativity scene is incidental to the overall display, it's not the primary reason why the display is there.

Q. If I may go back to one of the questions relating to what the city intended to do if they could not put the nativity scene up; I believe you testified that if the nativity scene were stolen and the city didn't have money to replace it that you would still erect a Christmas display, is that right? A. Yes.

[92] Q. Now if ultimately the courts, if we go through the whole gambit of appeals, if the courts decide that the nativity scene cannot be erected will the city still erect a Christmas display? A. I think His Honor asked me that question and I'm not hedging on the answer, I have tried to point out the responsibility in elective office as the chief executive of having to look at all alternatives at that point, if that helps you, if not I'll be glad to answer another question.

Q. No, that's not what I was trying to ask you; assuming that as a result of court action you could not erect a nativity scene? A. Then I would not.

Q. But would you erect a Christmas display? A. Positively.

MISS BALNDING: Thank you.

THE COURT: Is that it?

MISS BLANDING: Yes.

THE COURT: Any further questions, Mr. McMahon?

MR. McMAHON: No, Your Honor.

THE COURT: Thank you, Mayor.

(Witness excused.)

THOMAS W. RAMSBEY,

having been first duly [93] sworn, testified as follows:

Direct Examination By Miss Blanding

Q. (By Miss Blanding) Mr. Ramsbey, what is your professional background? A. I am both an ordained United Methodist minister and I am a professor, I have a Bachelor of Sacred Theology and a Ph.D. degree from Boston University.

Q. And what is your Ph.D. degree in? A. It's in the sociology of religion and social ethics.

Q. And could you explain exactly what the sociology of religion and social ethics is? A. Well, in a way they're two different fields. Sociology of religion is a social scientific study of the nature of religion and its social functions within societies. The area of social ethics is a field dealing with ethics,

particularly Christian ethics, as they relate to society so there is both elements in a degree.

Q. And you may have said this but I think I missed it, what type of studies did you engage in in order to become an ordained minister of the church? A. To be ordained in the United Methodist Church requires a Bachelor's Degree plus three years of professional studies or graduate studies in theology.

Q. And do you hold a Bachelor's degree in theology? A. Yes, it's a Bacheor but it's only that because the [94] medieval tradition, its really on a master's level.

Q. And in addition to that you've had three years of study also in theology? A. Yes.

Q. What is your present occupation? A. I am associate professor of sociology at Rhode Island College and chair of a department.

Q. And what past positions have you held? A. Well, I've been teaching at Rhode Island College—

THE COURT: Just give us a rundown on your whole curriculum vita.

THE WITNESS: Okay, I'll try to do that. I've been teaching for the last ten years at Rhode Island College. Before that I was a graduate student at Boston University, did some teaching there and in the last three years of my graduate studies I held the position of minister of the East Braintree United Methodist Church in Braintree, Massachusetts.

THE COURT: Have you done any writing at all?

THE WITNESS: Some, yes.

THE COURT: Any publications?

THE WITNESS: No, no major publications.

Q. Has your academic training included biblical studies? A. Yes, both the theological degree include the biblical studies and the advanced degree included some biblical [95] studies. However, I am not a biblical scholar, that should be clear.

Q. Were the biblical studies related to history at all? A. Yes.

Q. Now, in terms of the sociology of religion would that include the study of symbols having to do with religion? A. Yes.

Q. Would you explain what that study would entail? A. Well, sociologists would be interested in the symbols of religion because the symbols in a very real sense represent religious groupings. Symbols only have meaning as they are associated with groups, that is, groups invest the symbols with their meaning. They do not derive the meaning out of thin air. The groups themselves give the symbols their meaning and therefore sociologists are very much interested in symbols as they represent groups.

Q. And by what method do sociologists determine whether a symbol is religious or not religious? A. Well, while there's no absolutely sharp distinction most sociologists of religion today would follow what was first initiated by Dirkheim, the French sociologist, is distinguishing between the sacred and the profane and he said that almost all of the elements in the world are divided into two camps. One is the sacred [96] and one is the profane and one can tell the difference. Everyone knows the difference between the two and can recognize the difference between the two and he said one does not move easily between the two so that there is a distinction and he said that the sacred takes on its sacredness because of its close association with a given group, that is, the group itself invests that symbol with the meaning standing for the group, that's what makes it sacred.

Q. I see, and what makes a symbol fall into the camp of profane symbols? A. Well, in the sense that it loosely belongs to everyone. It has no particular, it's no particular close tie with any given group. We would today say that it's secularized to be the equivalent of that.

Q. Now Reverend Ramsbey, have you had the opportunity to view the nativity scene that we've been discussing that's the subject of this suit? A. Yes, I have.

Q. And when did you go and see that? A. Well, I'm not positive but as I recall it was after Christmas and I believe before New Year's, I believe it was in between that time period.

Q. What was your personal reaction to that scene?

MR. McMAHON: Objection.

[97] THE COURT: Overruled.

A. I really have two reactions, first I was uncomfortable with it, it being there because I knew that it had been sponsored by the city, I was uncomfortable with that, but I think I was as much appalled by the fact that here was a very sacred religious symbol to Christianity being erected by the city in conjunction with a lot of other symbols that clearly were not specifically Christian and I felt it took away from or demeaned the Christian symbol in that setting.

Q. Now will you explain your basis for saying that you view the nativity scene as clearly a religious symbol? A. Well, I think first of all a nativity scene is derived from the biblical accounts in Matthew and Luke and doesn't appear in the other two gospels and we're not quite sure why. It is clearly a Christian symbolism because it relates only to the birth of Christ. Moreover, the symbols that go with it, the figures are kneeling in worshipful attitude, even the animals are standing in a worshipful pose. There are angels according to the testimony yesterday and I only saw the one angel at the top of the scene but angels are not in any sense of the word secular symbols and cannot be equated. Angels are messengers from heaven, they deliver good news, sometimes bad news but mostly good [98] news to people and therefore the whole setting of the creche is a statement about the divinity if you will or the extraordinariness of the birth of this baby Jesus. It is no ordinary baby and that's very clear from the symbols that are there.

Q. Do you have an opinion as to whether a lay person who is not trained in this area would perceive the nativity scene as a sacred religious symbol or otherwise? A. Well, I think the commemorating or the noting of a birth in this way is very unusual. I may be wrong but my best recollection is that I don't know of any other historical figure whose birth is represented in such a manner as this. It's very unusual and the reason I think that it is done this way is because the biblical account of the birth of Jesus is a combination both of historical facts and the faith of the early church. The early church in writing that section of the bible was not only relating historical facts but it was making a statement about those historical facts and the creche is clearly a statement about the nature of the birth aside from the sheer physical birth of Jesus.

Q. So in your opinion then would you say it would be reasonable for a member of the public to view this scene as a religious symbol? [99] A. Anyone at all familiar with Christianity would recognize that it's a statement about the nature of Jesus. Anyone who is not familiar with Christianity would certainly regard it as rather extraordinary situation. The animals are, the presence of the animals, the shepards, kings all in combination, that's very unusual.

Q. What do you mean "extraordinary," would you explain? A. Well, the mere presence of kings and shepards is historically almost impossible. Kings did not associate with shepards and they most certainly did not do so in a setting of, before, in front of a baby recently born. The presence of angels, almost anyone in the Judao Christian culture, larger culture, would recognize that that is a religious symbol, it's quite clearly religious.

Q. So you're saying that the meaning of the nativity scene cannot be divorced from its religious origins, is that correct? A. I don't see how it can be because it comes out of the New Testament as Christians call it, the New Testament statement about Jesus, it's not a recording of historical facts. It's a statement about Jesus.

Q. Now you have also indicated, Reverend Ramsbey, that you're a minister in a Methodist Church, does the Methodist Church use nativity scenes as part of its [100] worship? A. Oh, yes, very clearly.

Q. Did you participate in a press conference or a statement to the press regarding your feelings about this suit? A. Yes, I was one of about ten clergy who made a statement following the introduction of the suit and following the Mayor's press conference to express a pastoral concern and to try to express also our concerns that we were very uncomfortable with government taking over what we regard as our symbols and using them for essentially their own purposes whatever they might be, however, they might be in terms of good will but they were still not being used by the group to which they belong, the churches and individual persons.

THE COURT: Reverend, was this a prepared statement?

THE WITNESS: Yes, it was.

THE COURT: Was it published as such?

THE WITNESS: I believe it was published in the newspapers, yes.

THE COURT: Do you have a copy of it?

THE WITNESS: I do not but I believe counsel has.

MISS BLANDING: Your Honor, I had a copy of [101] it but I can't locate it.

THE COURT: Does this statement reflect your personal views?

THE WITNESS: Yes, it does, I helped to draft most of it.

THE COURT: Well, in its entirety does it reflect your personal views?

THE WITNESS: Yes, it does.

THE COURT: Do you so testify as to the contents of that statement?

THE WITNESS: To state that it does represent my views?

THE COURT: Right.

THE WITNESS: Yes, I will do that.

Q. I will show you this, is this the statement you're referring to, Reverend Ramsbey? A. Yes, it is.

Q. And what's the significance of the names on the bottom? A. These are clergy persons who were willing to indicate that they agreed with the statement as it was presented to them. There are ten names.

THE COURT: I'd like to know what that statement is. I'm speaking of it not as to the other ministers which might evoke some comment as to whether it's hearsay or not as to them but as to this gentleman [102] that he said it's his statement and I would like him to tell me what that statement is as representing his statement. Will you give it to him so he can read it to me.

THE WITNESS: Would you like me to read it in its entirety?

THE COURT: Yes.

THE WITNESS: "We clergy of several religious traditions wish to express a pastoral concern growing out of the controversy surrounding the display of a nativity scene with city funds in Pawtucket. Our concerns are several noted below. While the festivities, light and generations of good will in this season have roots in both religion and secular tradition, the creche is a specifically religious symbol. Our country while deeply influenced by Judao Christian heritage is not itself Judao Christian but is pluralistic consisting of many rich religious traditions and recognizing the value of all. Government in our country wisely recognizing the diversity of these traditions was set up to steer clear of embracing any while protecting the religious freedom of all. We as pastors have a responsibility to educate our people in the history of religious strife and the futility of imposing religious beliefs on the [103] human conscience. The specifically religious observance of this holiday period belongs in our homes and in our churches

and synagogues. Although there are public recognitions of this glad season they should not be confined to those symbols and traditions which are not—" I'm sorry— "they should be confined to those symbols and traditions which are not identified with any one group. We call upon our public officials not to exploit the strong sentiments associated with religious festivals and divide majority from minority. Rather we hope they will raise to a states person like position and avoid the insensitivity of foisting upon others any specific religious traditions. In this way the true joy of the season can be appreciated by and made meaningful to the widest diversity of people."

MISS BLANDING: I have no further questions, Your Honor. I'd like to move to introduce the statement as an exhibit.

THE COURT: All right, no objection, it may be marked.

MR. McMAHON: Please, Your Honor.

THE COURT: She's moving the introduction of the statement. I assumed you had no objection.

MR. McMAHON: Yes, I do object, Your Honor, I'd rather keep it as it is.

[104] THE COURT: Sustained. It's read into the record anyway, it's there.

MR. McMAHON: That's right.

Cross Examination By Mr. McMahon

XQ. (By Mr. McMahon) Dr. Ramsbey, I take it you wold agree, would you not, that a nativity scene in a Methodist Church serves a different function from the nativity scene at the Hodgson Park display? A. I'm not sure, I think that it serves a different function, it's in a different setting but I don't think, I think it's the same function.

XQ. Doesn't the setting have a lot to do with the function, isn't there a difference between going to worship, for example,

and going to shop? A. Certainly but I think the symbol in that case remains the same regardless of its setting, I don't see a difference.

XQ. But didn't you say that you considered that the religious symbolism of the nativity scene was being demeaned in this kind of display which we have in this suit? A. Yes, by its association with other secular or non-Christian symbols, yes.

XQ. In other words, in its setting? A. Yes, that's true.

[105] XQ. And doesn't every symbol in some way or other make a statement of some kind? A. Yes, particularly about the nature of groups, yes.

XQ. Now what kind of symbol would you say, what kind of statement would you say Santa Claus makes? A. Santa Claus I think probably represents a secularized symbol of large of good will, of seasonal good will, of gift giving. I think our Santa Claus draws as much from Clement Moore as it does from St. Nicholas in the fourth century.

XQ. But St. Nicholas was a religious figure, correct? A. Yes, he was but I, most people who are familiar with Santa Claus aren't even aware of who or what were the circumstances of St. Nicholas.

XQ. He was a bishop, right? A. Yes, right, that's correct.

XQ. And the uniform represents a bishop's vestments, doesn't it? A. I believe they may well, yes, the red particularly but may I just add that I think it has been largely transformed again by Clement Moore in the last century into an almost secularized elf like figure today.

XQ. What kind of a statement do you think the snowman makes? A. Well, I'm not sure the snowman is a symbol really.

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[106] A. Yes, it is, it is used but I'm not sure that it represents any group. What I indicated earlier was that what I consider to be the secular or the profane symbols belong to almost any

group. They're things which belong to all of us. Snow, for example, belongs to all of us so thus snowmen do as well.

XQ. And the closer that symbol remains with the group the stonger the statement, correct? A. Yes, very definitely.

XQ. So that the statement that the nativity scene makes in a Methodist Church is a far different statement from what it would make if it were in Sears Roebuck department store? A. Well, there you're speaking of the group as a physical entity, a building, but the group is in fact whoever the people are who see that symbol.

XQ. But the people who go to Sears department store go with a completely different attitude from people who go to the Methodist Church to worship, do they not? A. That's right. I think that's one of the reasons Sears for example or any department store doesn't use creches very often in its advertising because in fact that would be so offensive to people that they would reject it. Yet Santa Claus, Christmas trees and so on are quite frequently used to sell things.

[107] XQ. Well, some of the religious symbols of Christmas are also used in shopping malls and the like, are they not? A. It's rather uncommon to see, all right, yes, they are used but it's uncommon to see them used for another purpose, that is, to sell things.

XQ. And this is one of your objections to the Christmas display in this case, to the use of the nativity scene in this case, is it not, that it's being used to sell things? A. Not primarily although from some of the testimony I think that it is being used for that purpose at least in part.

XQ. In the statement you read didn't you say, or perhaps it was your own, no, I'm sorry, it was your own comment, not the statement, didn't you say you were uncomfortable with government taking over religious symbols and using them for the government's purposes? A. Yes, I did say that.

XQ. So the government's purposes are different from the purposes of the religious group, right? A. Not necessarily.

The government may have more than the single purpose. A government after all serves all of the people and any religious group only serves a segment of that. Thus the government has many purposes for putting it there, one of which may be to enhance [108] the downtown business area. Another may be to create good will or a feeling of good will.

XQ. But it's not primarily a religious purpose and that's why you object to its being demeaning, isn't that correct? A. That is in part correct, yes.

XQ. Now the statement which you read into the record, had you ever made a public statement like that before, Doctor? I mean at a press conference for publication. A. I can't think of a time right off the top of my head that I've done quite that before, certainly not associated with the holiday season.

XQ. And that was a press conference held after this suit was brought, is that correct? A. Yes.

XQ. And it was in response to the press conference which the Mayor had after the suit was brought, correct? A. Partially, it was also in response to a lot of people being upset by both conditions, both the lawsuit and the Mayor's statement, yes.

XQ. Going back to my further questioning, Doctor, what function do you think all the Disney characters play as symbols in the Christmas display at Hodgson Park? A. I think they represent festivities, good will and joy of the season which belongs to all of us.

[109] XQ. And the same would be true of Christmas bells, Christmas trees? A. Bells perhaps less so but Christmas trees, yes. Bells are associated with churches so they're still more of an attachment there. Trees go way back in history to pre-Christian celebrations in northern Europe with the use of the evergreens and holly and so on.

XQ. Didn't the Christmas tree at one time also have a religious significance? A. Well, it was religious for those people way back there centuries before Christianity that the

trees which stayed green had a particular significance to the peoples of northern Europe and the druids and these people and so Christianity adapted the Christmas tree to its own purposes and gave it a special meaning for Christians but it has become resecularized by taking on a kind of usefulness to a lot of people.

XQ. Isn't it a fair statement, Doctor, that the entire Christmas national holiday is a secular celebration with a religious heritage? A. It is in part, it is not entirely. It still has remnants of it which are deeply religious and only associated with Christianity. It has other parts of it which belongs in a sense to the whole culture.

XQ. But you don't deny that it's a secularized national [110] holiday, do you, Doctor? A. It has been secularized but it's not entirely secularized, yes.

XQ. Well, what about Thanksgiving, Doctor, aren't there people who treat Thanksgiving as a primarily religious holiday? A. I'm sorry, I'm not sure I understood the question.

(Previous question read back.)

A. Yes.

XQ. But nevertheless as far as the nation as a whole is concerned you would not call Thanksgiving a primarily religious holiday, would you? A. No, I would not.

XQ. Aren't there people who treat Memorial Day as primarily a religious holiday? A. It certainly has strong religious overtones. I don't know if I would say primarily but there's strong religious elements in that, yes.

XQ. But as far as the nation as a whole is concerned it's a primarily secular observance, isn't it? A. Yes.

XQ. And the same could be said for Veterans Day? A. Yes, but not Easter.

XQ. Excuse me? A. But not Easter.

[111] XQ. Easter is not a national holiday, is that correct? A. Right, but it always appears on a Sunday and it's always a kind of a national recognition of the fact that the

day is occurring but quite unlike some of the holidays which have been partially secularized Easter has been far less secularized and I think the distinction is a matter of degree, sir, not of a radical difference.

XQ. Isn't the distinction that Easter has never been declared by law to be a national holiday, isn't that an important part of the distinction? A. Well, Good Friday has been declared by state law to be a holiday in practice, in terms of release of children from school. Now that's in part a movement in the direction of secularizing. This process is going on all the time.

XQ. Are you saying, Doctor, that Good Friday is a legal holiday in some places? A. No, it's not a legal holiday but most schools in the state of Rhode Island close on Good Friday which includes people of all different religious persuasions.

XQ. Well, schools close on Sunday too, don't they? A. Yes.

XQ. Sunday is a religious day for many, many people, is it not? [112] A. It certainly is.

XQ. The fact that schools close on Sunday does not mean that the church has secularized the religious observance of Sunday, does it? A. It does mean the society has utilized what was originally a religious day, the Sabbath, and converted it into a secular day of rest.

XQ. And that's essentially the same process that's occurred with Christmas, isn't it, Doctor? A. To some degree, yes, but I think a distinction can still be made between those elements which have been secularized and those which still remain with a largely religious aura.

XQ. Which is also true of Memorial Day, Veterans Day, Thanksgiving, at least those three, right? A. Yes, with regard to Thanksgiving I've always been curious as to how one can celebrate Thanksgiving in a totally secular light, to whom does one give thanks?

MR. McMAHON: Perhaps to the local football team. (Laughter)

THE WITNESS: Perhaps so.

MR. McMAHON: No further questions, Your Honor.

[113] *Re-Direct Examination By Miss Blanding*

Q. (By Miss Blanding) Reverend Ramsbey, Mr. McMahon has asked you a great many questions about degrees of secularization of different aspects of Christmas. Didn't you testify that the potential for secularization of the nativity scene was one of your objections to the government including it in this display? A. Yes, it is because as we talked, discussed during the testimony, the Christmas tree which one time was almost exclusively used by Christians has now taken on a much wider use by others and has lost the larger share of its specifically religious meaningful Christians.

Q. And you're concerned that the same thing may happen to the nativity scene? A. Yes, I am, that's particularly when it's used in that way. I think if it remains in our homes and in our churches that's not likely to happen but it is likely to happen once it becomes either used by the government or by commercial interests.

Q. Now as to the setting of symbols. If a symbol is associated with one group, for instance the nativity scene, is used by another group in some fashion does its use by the second group mean that all of a sudden it's not associated with the first group? A. No, because, but it just may affect that process of [114] secularization, but no, certainly it continues to be used. I continue to see the creche being very central to Christian celebration of the season.

MISS BLANDING: I have no further questions, Your Honor.

THE COURT: Tell me, Reverend, do you equate the nativity scene to Veterans Day, Memorial Day, Thanksgiving Day?

THE WITNESS: The nativity scene?

THE COURT: Yes.

THE WITNESS: No, I do not, I think it's—

THE COURT: Do you equate it to Santa Claus?

THE WITNESS: No, it's associated with Santa Claus but not equated, no.

THE COURT: Well, tell me how you draw the distinction when you said that these, at least Veterans Day, Memorial Day and Thanksgiving have religious connotations?

THE WITNESS: All right, I think the distinction comes from the degree to which the symbol still says something significant about the religious faith of its origin and I continue to see the creche or the manger scene as making a very significant statement about the nature of Jesus which is what distinguishes Christians from other groups, am I [115] understanding your question?

THE COURT: Well, I don't want to press it. You were asked by counsel about Veterans Day, Memorial Day and Thanksgiving Day and you conceded that they are at least in part religious and I'm trying to find out from you how you distinguish them, if you do, from the nativity scene.

THE WITNESS: Well, I would distinguish them on the basis that any kind of a holiday which has its origin in holy day becomes a kind of celebration of a whole group of people and therefore, say the 4th of July, the flag takes on a strong symbolic representation of the nation, that group of people. The flag then in that scene represents all of us but the creche is more specifically associated with one group.

THE COURT: Anything further, Counsellors?

MR. McMAHON: Just one short question.

XQ. (By Mr. McMahon) But the creche is just one of many symbols which is part of the overall celebration of Christmas, is that not correct? A. It is.

Re-Direct Examination By Miss Blanding

Q. (By Miss Blanding) Reverend Ramsbey, in an attempt to clarify distinctions between Veterans Day and Memorial Day and Thanksgiving, Christmas has its origin with [116] Christians, is that right? A. Yes, excuse me, although the celebration of Christmas on December 25th has its roots in the pre-Christian religion, the selection of that particular date as a date on which to celebrate, it goes way back.

Q. In terms of the celebration of the birth of Christ, is that founded or rooted in a particular religion? A. Yes.

Q. And that would be? A. Christianity.

Q. Are any of those other holidays you mentioned founded or rooted in the same way on the tenets of a particular religious faith? A. If I'm not mistaken Thanksgiving was established by Presidential proclamation by Abraham Lincoln and Memorial Day I think was also established by government decree. Those do not have roots so far as I know in religious traditions although they recognize religious traditions.

MISS BLANDING: Thank you, Reverend.

Re-Cross Examination By Mr. McMahon

XQ. (By Mr. McMahon) Well, Doctor, though isn't Thanksgiving associated with the Pilgrims? A. Yes.

XQ. And doesn't that have a religion, historical religious, [117] fairly specific historical religious association? A. I think it does but in contrast the Pilgrims refused to celebrate Christmas because they thought it was a pagan holiday. In other words, they being very religious people felt the holiday had been taken away from the pagans and refused to celebrate for that reason. In other words, they held it to be, the birth of Jesus, to be too important to be a legal day.

XQ. So that people who celebrate, historically celebrated Thanksgiving as a religious holiday considered Christmas a pagan holiday, is that correct? A. Yes.

XQ. But our roots in the celebration of Thanksgiving do in fact go to the religious tradition of the Pilgrims? A. Yes.

XQ. And that's a fairly definite association, is it not? A. I think so, yes, you're correct.

MR. McMAHON: Thank you.

MISS BLANDING: Plaintiff rests.

(Witness excused.)

THE COURT: Who's your next witness?

MISS BLANDING: We rest, Your Honor. The plaintiff rests.

* * *

[1] FRIDAY, FEBRUARY 6, 1981

(Court Convened)

MR. McMAHON: Defendants would like to call Mr. Myron Stoller.

MYRON STOLLER,
having been first duly sworn, testified as follows:

Direct Examination By Mr. McMahon

Q. Mr. Stoller, what is your occupation? A. I am a merchant and corporate officer in the retail business.

Q. And what is the retail business with which you are connected? A. Men's wear.

Q. What is the name of it? A. Mike's, Incorporated doing business as Saltzman's.

Q. Mr. Stoller, I believe you said that you're connected with a business known as Saltzman's? A. That's correct.

Q. And where is Saltzman's located in the City of Pawtucket? A. 230 Main Street.

Q. And what line of merchandise does Saltzman deal in? A. Men's wear.

Q. How long have you been in the retail business in the City of Pawtucket, Mr. Stoller? A. Nine years.

[2] Q. And in your capacity in the retail business, is it part of your duties to determine from your competitors and from your customers the attitude of customers and businessmen which promote the commercial activities in downtown Pawtucket? A. That's correct.

Q. And in connection with your business, are you also associated with other retailers in downtown Pawtucket? A. Yes, I am in an organization called Pawtucket Plaza Associates.

Q. And what is your position in Pawtucket Plaza Associates? A. I am the president of the associates.

Q. And what is the function and operation of Pawtucket Plaza Associates? A. Coordinate promotions and the retail activity in the plaza area of Pawtucket.

Q. And would you generally describe for the Court what the plaza area embraces in downtown Pawtucket? A. The plaza area actually starts right at Route 95 and extends up to Broad Street and Dexter Street.

Q. It includes basically the entire retail downtown area of Pawtucket, is that correct? A. That's correct.

Q. And I'll ask approximately what percentage of annual retail sales in the City of Pawtucket is done during [3] the Christmas season? A. Approximately 25 percent of our yearly business is done between the period Thanksgiving through Christmas.

Q. And in connection with that retail business, what is your position as an individual retailer and the position of your association with respect to Christmas promotions? A. It's very important to us, in fact, in the retail business in the nine months of the year, you try to stay even and all our profits are generated in the Christmas season.

Q. And do you and your other members encourage the promotion of Christmas through decorations and displays? A. We do.

Q. And do you as an individual retailer and the members of your association have a position with respect to the city spon-

sored display at Hodgson Park insofar as it affects your business? A. We do.

Q. What is that position? A. We are highly in favor of it and it has created an atmosphere that we enjoy and it brings a Christmas spirit to the populus of the area.

Q. And what do you consider to be the principal impact of that display at Hodgson Park? A. It's a draw for people from miles around to come and see it, and anyone that comes to see that is a potential [4] customer for the merchants in town.

Q. Now I will ask you, what if any impact in your view as an individual retailer and in the view of your associates the nativity scene adds to the Christmas display? A. Absolutely nothing.

THE COURT: What was that question, please, Mr. Spertini, will you repeat it?

(Previous Question Read)

Q. By the way, Mr. Stoller, what is your own religious affiliation? A. I am Jewish.

Q. Do you personally have any objections to the inclusion of the nativity scene in the Christmas display? A. Absolutely not.

Q. I'll ask you whether any of your colleagues in the association are also Jewish? A. Yes, they are.

Q. Do you know whether any of them have ever expressed any reservations concerning the inclusion of the nativity scene? A. They have not to me.

Q. I will ask you whether prior to the institution of this lawsuit you ever became aware, either through your customers or through your colleague retailers, of any [5] complaints about or controversy concerning the nativity scene in the Hodgson Park display? A. Absolutely not.

Q. I will ask you whether your association coordinates with the City during the Christmas season in scheduling the erection of the Hodgson park display? A. Yes, we do.

Q. And what does that consist of? A. Well, we're always trying to get the City to put it up earlier and earlier in the year.

Q. What is your position with respect to the time you, your association would like to have it put up? A. We would like it either just before or right after Thanksgiving.

Q. And is that earlier than the City established the display this year? A. Yes, it is.

Q. And did the City contact you concerning the timing for the opening of the display? A. Yes, they did.

Q. And what was the substance of that discussion? A. They asked if I would rather have it on display on the 6th or the 13th and I said the 6th is too late for me, but if that's the earliest you can do it, that would be all right.

[6] Q. And the basis for your position is to encourage retail sales as early as possible in the Christmas season, is that correct? A. That is correct.

MS. BLANDING: Your Honor, I object. I think that's leading the witness.

THE COURT: It is leading but we'll let it stand. Try to watch it, Mr. McMahon.

Q. Is your association and the other retailers in downtown Pawtucket, I'll ask you whether you have an ongoing relationship with the City in promoting your commercial activities? A. Constantly.

Q. Will you describe generally what that consists of throughout the year? A. We meet with the City, oh, in the past year probably met six or eight times, and the City has been a great help to us in helping promote the plaza. The Mayor, his assistant, the Planning Board, all departments of the City and the merchants association have been in contact in ongoing discussions on promotion.

McMAHON: No further questions, Your Honor.

Cross-Examination By Ms. Blanding

Q. Mr. Stoller, you testified that you believe that the [7] impact of the nativity scene added absolutely nothing to the Christmas display in Hodgson Park, is that right? A. That's correct.

Q. So therefore, wouldn't you say that if the nativity scene was not part of that Christmas display, that the entire Christmas display itself with the lights and all the other fixtures and the Christmas trees, the Santa Claus, the whole bit, would still serve the exact same purpose of drawing business to the Pawtucket downtown area? A. That's correct.

Q. Now I believe you have also testified that prior to the suit that you had no awareness of any controversy regarding the City's erection of a nativity scene, is that correct? A. That's correct.

Q. And you testified that to your knowledge the Pawtucket Plaza Association had no awareness of that, is that correct? A. That's correct.

Q. Are you normally in a position either as an individual retailer or as an officer of the Pawtucket Plaza Association to receive complaints about city sponsored displays from your customers? A. Through the grapevine we would hear of these things, yes.

Q. Meaning it would not come from customers directly but [8] you would hear about them second, third of fourthhand down the line. A. They conceivably could be direct from customers or from city officials.

Q. The city officials would normally make you aware that customers had complained to them about their own displays for various holidays I'm talking about? A. Very possibly, yes.

Q. And customers normally would complain to you, saying if the City had a Fourth of July celebration that they did not like the particular way the City celebrated it? A. Oh, we would hear about it, yes.

Q. From your customers? A. Yes.

MS. BLANDING: I Have no further questions.

MR. McMAHON: No questions.

(Witness excused.)

MR. McMAHON: Mr. Dennis Moore, please.

DENNIS W. MOORE,
having been first duly sworn, testified as follows:

Direct Examination By Mr. McMahon

Q. Mr. Moore, what is your occupation? A. I'm the Executive Director of Downtown Pawtucket Revitalization, Inc.

Q. And what is that organization? [9] A. It's a newly formed corporation which is involved strictly with the promotional aspect of downtown Pawtucket.

Q. And how long have you been associated with this organization? A. Since December 8th.

Q. And what was your occupation prior to your affiliation with this group? A. I was a program manager for the Pawtucket Redevelopment Agency for 10 years since August of 1970.

Q. And that Pawtucket Redevelopment Agency is a public agency? A. Yes.

THE COURT: Let me understand; are they paid out, out of the City of Pawtucket treasury?

THE WITNESS: My new position, Your Honor?

THE COURT: Yes, as Executive Director; in other words, are you an employee of the City of Pawtucket?

THE WITNESS: The project is funded by the City of Pawtucket, the Chamber of Commerce, downtown business interests, banking, area manufacturers.

THE COURT: Your check that you receive, where does it come from?

THE WITNESS: It comes from the City of Pawtucket.

[10] Q. And where is your office?

THE COURT: One other question, if you don't mind, I want to get a perspective on it. How are you hired, who is the deciding force in whether or not, or who was the deciding force in getting you this appointment?

THE WITNESS: I was interviewed by a three-member group of individuals who had been involved in a task force set up by the Chamber of Commerce. This process had been ongoing for approximately 14 months, but my actual employment was decided by a three-member group.

THE COURT: They are the ones who dedided you should have this job?

THE WITNESS: Yes, sir.

THE COURT: And who are these three people?

THE WITNESS: Members of the group were Woody Kahn, the President of Apex, Bob Allchiard, the President of the Chamber, Jack Nixon, Regional Vice President of InBank.

THE COURT: Okay, thank you very much.

Q. And where is your office, Mr. Moore? A. My offices are located at 42 Park Place. That's the offices of the Blackstone Valley Chamber of Commerce.

Q. So your principal affiliation in terms of your daily [11] duties is with the Chamber of Commerce, is that correct? A. Yes, it is.

Q. And I believe you testified that the purpose of your organization is the promotion of downtown Pawtucket, is that correct? A. Yes.

Q. Would you please describe what those promotional activities involve? A. Generally the areas that we are concerned are the obvious promotional events, the development of a 12-month promotional calendar for downtown, the marketing of downtown as a regional center in the areas of culture, recreation, retailing, office space and financing. We're also involved in developing of creative financial strategies for getting new clients into the downtown area.

Q. And as part of those promotional activities, does your organization have a position with respect to the function of the City's Christmas display at Hodgson Park? A. Well obviously in a development of the 12-month promotional calendar, the Christmas promotion events are geared around the activities at Hodgson Park in addition to retail events which fly off of that.

Q. And does your organization have—strike that. [12] And what, in the view of your organization, is the principal impact of the Hodgson Park Christmas display? A. We consider the Hodsgson Park a key link in bringing commerce into the City. It is visible from 95, the tree, the lights. We have the potential of 100,000 cars a day traveling 95, if we can attract a percentage based on that Christmas display, that is helping the commercial aspects of the retailers downtown.

McMAHON: No further questions, Your Honor.

Cross-Examination By Ms. Blanding

XQ. Mr. Moore, you testified that the Pawtucket Revitalization, Inc. was a combination effort among the City and the business and the Chamber of Commerce. Where do your directives come from or guidelines as to how you should run the revitalization association? A. Okay, we have a 16-member Board of Directors which has been appointed, five members appointed by the City of Pawtucket, five members appointed by the Chamber of Commerce and six members appointed jointly between the City and the Chamber.

XQ. And the Board will meet regularly and vote on ideas that they want you to carry out, is that it? A. Yes, the Board has been broken down into five task forces involved in retail development, office development, [13] financing, marketing and mall management. There are chairman of each of these task force and there is also an executive committee which is the official decision-making body of the corporation.

THE COURT: I assume that the three people who hired you are also members of this organization?

THE WITNESS: Two of the three are, Your Honor. The third member, Bob Allchiard is the President of the Chamber, obviously with those duties he dosen't have enough time to get involved in this, but Jack Nixon and Woody Kahn are both members of the Board of Directors.

XQ. And is the membership in the task force determined in any way by dividing it up, say, one member from the City, one member from the Chamber, one member from retail, or is it—how are the task forces set up? A. No, the decisions on the makeups of the various task forces was made based on the knowledge of the individuals on the Board of Directors. That decision is made by myself and also the Chairman of the Corporation, E. Swift Lawrence.

XQ. And through the task forces come up with suggestions that you should follow? A. Yes, meetings are scheduled. Obviously, the initial conduct of the corporation, most of the work is being [14] done right now so that the individual task forces are meeting weekly right now. The task forces come up with various statements of objectives which are then approved by the Executive Committee and put into action.

XQ. Now you testified, I believe, that the revitalization association is very interested in the Hodgson Park area because of its location and proximity to Route 95, is that right? A. Yes.

XQ. And you believe that that proximity to 95 and to the downtown area results in a great many people viewing the displays that would be set up there? A. Yes, I do.

XQ. And you believe that the primary impact of the Christmas display is to attract people, excuse me, attract commerce into the downtown area, is that right? A. Yes, I do.

XQ. And do you feel that that impact would be affected at all if the entire Christmas display remained the same except that the nativity scene was not there? A. Repeat that question?

XQ. Do you feel that the impact of bringing commerce into the downtown area would be affected at all if the entire

Christmas display with the lights and all of the other elements were still present but the nativity scene was not? [15] A. No, I don't.

MS. BLANDING: I have no further questions, Your Honor.

MR. McMAHON: No further questions.

(Witness Excused)

DAVID H. FREEMAN,
having been first duly sworn, testified as follows:

Direct Examination by Mr. McMahon

Q. Dr. Freeman, by whom are you employed? A. University of Rhode Island.

Q. What is your position? A. Professor of Philosophy.

Q. And would you please describe for the Court your educational background, Dr. Freeman? A. Yes, I'm a graduate of Calvin College for a Bachelor of Arts. I have an M.A. and a Ph.D. from the University of Pennsylvania; I studied at the Freed University of Amsterdam for more than a year.

Q. And those degrees at the University of Pennsylvania were in what field? A. In philosophy.

Q. And do you have any publications, Dr. Freeman? A. Yes, I've written several books, Philosophical Study of Religion, a textbook in logic, a book on recent trends in philosophy and theology, Know Yourself and numerous [16] articles and translations.

THE COURT: Excuse me, what was the first book, Doctor?

THE WITNESS: Philosophical Study of Religion.

Q. How long have you been on the faculty of the University of Rhode Island? A. Since 1957.

Q. And since 1957, would you please describe for the Court what positions you have held on the faculty at the University

of Rhode Island? A. I was chairman of the department for about 10 years of that time. I have been on various committees, the secretary of the AUP, a member of the faculty senate, a chairman of the senate salary committee and on the deans' advisory committee, president's advisory committee, among others.

Q. And what courses do you teach at the University of Rhode Island? A. Currently I'm teaching the philosophy of religion. In the course of the years, I've taught most every undergraduate course.

Q. Has your professional work involved any research with respect to the philosophical aspects of religion? A. Yes, in addition to philosophy of religion, I meant to [17] say I was teaching comparative religion at the moment. My recent sabbatical took me to India, Japan, Burma, Korea, China to study, specifically to study religion.

Q. And the research in that foreign travel involved specifically what aspects of the study of religion? A. I visited many temples and talked to priests in Buddhists and Hindu faiths primarily.

Q. And did this research include the study of religious symbolism? A. Yes, when I entered temples, I took careful note of the art and tried to trace the meaning of the statutes in terms of the Hindu, Buddhist theology.

Q. Doctor, will you please describe for the Court your own religious background? A. I'm a Protestant, my father was brought up in the Jewish faith, my great-grandfather on my mother's side was a rabbi.

Q. I will ask you, Doctor, to describe for the Court in definition terms what is a symbol? A. A symbol is a sign that refers to something beyond itself. It has, it seemed to me, two aspects: one would be objective, that it refers to something in a particular realm or a dimension of our experience; the second would be the subjective response of the person who views the symbol, and this would vary depending upon his own [18]

conceptual background or the world in which he lives, what his beliefs are, his attitudes, his whole cultural milieu.

Q. Generally speaking, what is the function of a religious symbol? A. A religious symbol doesn't occur in a vacuum, it occurs in a context and its function would be to evoke a religious response, an attitude of worship of awe, a respect for the holy, a respect for the sacred.

Q. Now, would this religious response occur in any setting? A. Hardly. I've never seen people in a museum looking at a religious, what was religious in origin as a painting assume an attitude of worship. The response there would be aesthetic. I would say the same thing in a concert hall; Ave Maria in a church or at a wedding or at a funeral might evoke a religious response, but in a concert the response would be aesthetic, so I'd say that whether it evokes a religious response depends upon the attitude of the person viewing that symbol and where it's found.

Q. And with respect to the various symbols of Christmas, I will ask you whether or I will ask you which of them would qualify as religious symbols? A. Originally they all would, but it would be committing a fallacy to trace the origin in deciding whether it was [19] a religious symbol on that basis. It seems that Santa Claus at one time was religious, the star on the Christmas tree, the lights are substitutes probably for candles that are associated with church usually, and I don't know whether the snowman and other symbols of that sort have come in, the Christmas tree in origin was religious and I think that many people bemoan the fact that these symbols have lost their religious meaning and it seems that the nativity scene is in that category for most people. For many, it still retains its religious significance in another context.

Q. Would you please explain what you mean by the nativity scene losing its religious meaning? A. Well, in the context you can't take, it seems to me that you can't take a part of a total display out of that context and view it in the abstract.

When I looked at pictures of that display in the park, I see in the background Santa Claus and the reindeer and the location of it between two shopping centers. People there, it would seem to me, are not going there to worship or to pray, they're going there to shop, and what the function that it would have for most people at least, the great majority if not all, would be to participate in the Christmas spirit, brotherhood, peace and let loose with their money.

* * *

[28] *Cross-Examination by Ms. Blanding*

* * *

XQ. But doesn't that scene tell a whole story in and of itself? A. I don't believe so. More would be needed.

XQ. Are you saying that if I stood in front of a life-size nativity scene, that I would not look at it or any reasonable person educated in the Judeo-Christian culture would not look at it and see it as telling an entire story?

MR. McMAHON: Well, I'm going to object on the grounds that there's no evidence that this is a life-size nativity scene.

THE COURT: Overruled.

A. Would you mind repeating the question.

(Pending Question Read)

A. I would think that you'd be looking at that outside of a context, that's my whole point of my testimony, [33] that these symbols become religious in a context and in a different context they're not. If I'm looking at medieval art in a museum, of course the background of that art would be religious and anyone knowing that would know it's religious, but in that context that's not a religious symbol. Symbols function contextually.

XQ. So you're saying that it looses all meaning as a religious symbol, all significance as a religious symbol merely because it's not set in a religious setting? A. I would say so. I wouldn't say all, most.

XQ. But it would still retain some of its religious? A. For some people the subjectivity of people that what they bring to it would vary, I can't tell what it would do. With me, it doesn't evoke any religious sentiment.

XQ. But wouldn't you say it would be reasonable response to a person to still see it as a religious symbol or still realize its religious meaning even though it appeared in out of context? A. If by reasonable you mean there is nothing pathological about it, it's certainly a possible response.

XQ. Would it surprise you that a person might have that response? A. No, not at all.

• • •

[36] XQ. Would you define that response that I suggested surprising? A. No, I wouldn't be surprised. People repond any number of ways.

XQ. Now I believe you testified that to many the nativity scene would still have religious significance, is that right? A. In a religious context, yes.

XQ. And you testified that many of those people might be upset at seeing the nativity scene which they viewed as a religious symbol cast into the middle of a secular display, isn't that right? A. Some would, yes.

XQ. And wouldn't that be because even though it was in the middle of that secular display, they still saw it as a religious symbol that belonged to them? A. Possibly, yes.

MS. BLANDING: If I may just have a minute, Your Honor? (Pause) I have no further questions, Your Honor.

Redirect Examination By Mr. McMahon

Q. Referring to that last question, Doctor, wouldn't the objection of those who saw it in this secular setting [37] be that their religious symbol had become secularized? A. Yes, that would be their objection and they might object to the whole display of Christmas. My father is a Presbyterian minister and he would object to the whole display.

THE COURT: Anything further?
MR. McMAHON: No, Your Honor.
THE COURT: Thank you, Doctor, I think that does it.

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PLAINTIFF'S EXHIBIT NO. 1

PLAINTIFF'S EXHIBIT NO. 4

14 THE EVENING TIMES (Pawtucket, R.I.) SATURDAY, DECEMBER 27, 1980

LETTERS:

Don't fight 'Little Baby Jesus'

Your editorial said it all, but one thing I cannot comprehend.

Who are these people to tell the rest of the citizens, who are well pleased, what we should and should not have on display? What walk of life dictates what is good for the other people? Let them ask the people who wait for the bus every day whether or not they like it.

I love Christmas season, every minute of it, and everything about it.

"ACLU," whoever you are, if you like the limelight why don't you do an act of charity instead of trying to fight "Little Baby Jesus" in the manger?

The longer I live, the less I understand people who protest the important values of life.

— Mary Monaghan
Pawtucket

Let's gather around the crib

Let's take our hats off to our courageous and outspoken Mayor, Dennis M. Lynch, who has come to the defense of all Christians in the controversial crib scene.

At this time and age, when we are surrounded with all types of misery and frustration, we all look to the newborn child for peace and a better world.

It is a sad commentary when such an organization as the ACLU can disrupt one of the greatest holidays, hiding behind the First Amendment. Again we must continue to give our moral support to a man who has the courage of his convictions.

Mayor Lynch, you are not alone in this fight. Millions of God-fearing people are on your team. Let's gather around the crib, wishing people of all faiths a greater future, with peace on earth, good will toward men.

— Pat Loughery
Pawtucket

Decorate with a flood-lit dollar

I am enraged and I am not going to take it any longer.

I wish to register my protest in the name of a segment of the long-suffering silent majority — the Christian and Jewish believers of Rhode Island.

Must our symbols of belief be constantly questioned and expurgated from public display by those who would split hairs on every issue?

These inanimate decorative objects of our religious persuasion are meant as a reminder to us of the true meanings of our special days of Hanukkah and Christmas.

Why would people who profess no belief feel threatened, proselytized or offended by something that has no meaning for them?

Perhaps the ACLU would raise an appropriate symbol of the Christmas, if I may still use the word freely, season: a gigantic, decorated and flood-lit dollar sign in every park.

I am really disillusioned by the courts' constant attempts not to offend the strident few at the expense of the convictions of the silent majority. The question is who is being protected from what and who is being persecuted?

Doesn't the very Constitution which guarantees separation of church and state also guarantee my right to worship freely? If our public symbols must be abolished are worshippers to be forced back into stealthily gathering in hidden places?

Please Christians and Jews of R.I., voice your protest against this callous sit-picking.

— Patricia A. Lassiter
Cumberland

What will ACLU ban next?

I would just like to say "I have rights and so does my family" and we want the Nativity scene to stay at the Hodgson Rotary Park.

I agree with your editorial wholeheartedly.

What next, ban the singing of "God Bless America" in public? Taking the words "In God we Trust" off our coins?

Citizens of Pawtucket support Mayor Lynch in his fight against the ACLU. He is fighting for your rights too.

ACLU, why don't you put your time, energy, and money to work and help the needy people in our community instead of trying to take down a harmless Nativity scene that only stands for love and peace on one of our most beautiful of holidays.

— Joan Guimont
Pawtucket

PLAINTIFF'S EXHIBIT NO. 11

"They prostrated themselves and did Him homage . . . presenting Him with gifts of gold, frankincense, and myrrh."
Matthew 2:11

Dear Myers Rymer's family,

May your happiness come from giving the Christmas message to others.

May we bless you in your effort to preserve the spiritual aspect of Christmas.

Sis Darlene DeBarnardo

Dear Mayor Lynch.

As Taxpayers, and life long residents, we Congratulate you on your determination to keep the Nativity Scene on display. Christmas Day is a national holiday and is celebrated as such. - The birth of Christ -

When the appointed time came,
God sent his Son,
born of a woman.
Galatians 4:4

Special Christmas Hope

I hope in God
the Christmas feast
as it comes round
once more
will bring you deeper
Faith and Love
than it ever brought
before!

Carl & Ellen Johnson
85 Cleveland St.
Paul S.D.

Dec. 18, 1980

Dear Mr. Mayor,

I applaud you! It's time that someone with courage stood up to the few who want to dictate to the majority as to what they can and cannot celebrate and revere in the way they wish to.

I wish you and your family a Wonderful Xmas and a very happy and healthy New Year.

Sincerely,

(Mrs.) Helen L. Rhoads

49 Lupine St.
Pawtucket, R.I.
02860

Dear Mayor Lyjack

Could it be that old lady O'Hair is behind the A.C.L.U.? Would think they'd find some charitable deed to work at - with all the poor around, instead of a christmas decorations - Christmas is Christ's Birthday - not only in church but out side too, we want that Christmas display on the river bank every Yuletide Sincerely

Delia Bellmeau

Dear Mayor Lynch,

We wish to thank you for standing up to the A.C.L.U.

As taxpayers of this city we want the Nativity Scene to continue to be displayed each Christmas as it has in the past.

It is Christ's birthday, and that is what we and the world would are celebrating.

May God's blessings surround you
Faith to strengthen you
Hope to encourage you
Love to embrace you
At Christmas and always!

Mr. & Mrs John Sita & Family
80 Blaisdell Ave.
Lawr. R.I.

TRINITY ASSEMBLY OF GOD

Pastor John A. Cooper

Meeting At
George J. Peters School
15 Mayberry Street
Cranston, RI 02920

Mailing Address
P. O. Box 3298
Providence, RI 02909
Phone: 943-3802

December 23, 1980

Mayor Dennis Lynch
City Hall
City of Pawtucket
Pawtucket, R.I. 02860

Choice greetings in Christ's name. It was a thrill to see a Public Official stand up for his convictions and that which is right concerning the nativity scene being placed in front of the City Hall. I only regret that the ACLU and all the land do not recognize the fact that this nation was founded upon Christianity. It was founded upon Jesus Christ. Our constitution was derived from a prayer meeting of all the people who had assembled there for that first Constitutional Convention. It is with great remorse that people who call themselves ministers of the Gospel of Christ could ever or should ever come out against such a ceremonious event as they have done so. Let me pledge to you our support in what you have stood for concerning the nativity scene there in Pawtucket. May God bless you.

In Service for Christ,

John A. Cooper

John A. Cooper, Pastor

JAC:ss

Thanks for sticking it
your guns! We're praying
for you!

A Christmas Gift

Mayor Dennis Lynch

will share in the fruits of

a Daily Mass

offered by the

Franciscan Friars

for a period of one year

beginning christmas day

at the request of

Lillian Morin

Signed For Fergus A. Healy, O.F.M.

St. Francis Chapel
20 Page Street
Providence, R. I. 02903

12-18-80

JAMES SMITH
106 FISKE AV
CUMBERLAND RI 02864

Dear Mr Taylor,

"Where is that one "Nation under God" our Forefathers spoke about, it is High time that people stood up to be counted, and that the Majority of our Judges got their Heads out of the Sand, and gave this Country back to God fearing people. "Righteousness still exalteth a Nation." my Wife & I want you to know that we are with you 100% in your stand. Bible reading is forbidden in our Schools, and so is prayer, what next?

Sincerely James & Jessie Smith

159

57 Redwing Street
Prov. R.I. 02907
Jan. 15, 1981

Mayor Dennis M. Lynch
Pawtucket, R.I.

Dear Hon. Mayor:

Though I am not of your City, I want to Congratulate you on your insistance of keeping the Nativity display in your City, for the Christmas Season. And my prayers will be with you that you will win this case in Court, to be able to have it in future years. I am somewhat skeptical of the presiding Judge who has a leaning towards the wrong side instead of the good, in my opinion.

But doesn't anyone realize that there wouldn't be any Christmas to celebrate if it weren't what the Chreche represents? Yet the merchants take great advantage of this Season to Capitalize on it.

"The Scrooge of Christmas 1980", as you well described them, have nothing to say about that.

It is unbelievable that some Ministers have banned together against this righteous scene, to side with the Am. Civil Liberties Union. Don't they remember that our first settlers came here for freedom of religion?

May "God" bless you in your efforts to keep "Christ" in Christmas and win this case against the American Civil Liberties Union.

Yours Truly,
Miss Angelina Magenais
(A concerned Senior Citizen)

Dear Mayor Lynch,

The controversy over the Nativity Scene in Pawtucket has upset my family and me. Just knowing, that a handful of atheists could actually get a court date for such a thing, makes me boiling mad.

We don't live in Pawtucket now but what is happening, goes beyond city limits. When a bunch of people strike out at God, they'll have to take on all of us.

Every time a handful of atheists unload their empty non-beliefs on us, they spit out separation of church and state. Separation of church and state, which was brought about by Roger Williams, wasn't intended to chase God away, to remove Him from all places. It was intended to keep the state or Government from forcing all people to worship when and where they were told. It gave the people the freedom to worship in their own way, in their own religion or not worship at all, if they chose.

Why do people keep using separation of

church and state in the wrong way? Roger Williams was a man of God, a minister. We have the right to worship whenever and wherever we want to and no one is taking that away from us.

I can't understand why they work so hard to prove God doesn't exist. Why do they work so hard for someone who isn't even there, in their opinion. I don't believe in Santa Claus, the Easter Bunny or the tooth fairy but I wouldn't do a thing to bring my non-beliefs alive. They do exist for some people, for children. I wouldn't set out on a campaign to take down Santa Claus statues or have a fit because city workers are paid to put them on display. As long as I know they don't exist, why would I get so bothered if others think they do.

Mayor Lynch, I don't speak out about many issues but when a handful ~~full~~ of cold blooded atheists strike out at my God, Jesus and my family and I are Roman Catholics

and we are so sick of hearing their stupid, empty ideas. They cannot take our freedom of Religion or freedom of speech away. They are not taking God out of this country.

I bet the atheists accept Christmas bonuses and their children receive gifts. They wanted all God related Christmas Hymns to be stopped in public places a few years ago. Don't they know there wouldn't be a Christmas if except for God. Why do they celebrate the birth of someone who doesn't exist. It certainly can't be the Santa Claus angle, cause he doesn't exist either.

When this goes to Court on Jan. 12th will the Court room be opened to the public?

Thank you for taking the time to read my letter.

Sincerely,

Sharon Hesson

22 alpine St.
Warwick, R. I. 02889

PLAINTIFF'S EXHIBIT NO. 12

'Let us see victory . . . over the ACLU'

I was very sadly shaken when I read the Dec. 23 news article reporting that so many ministers — who are really not ministers of the Gospel of Jesus Christ but ministers of a social gospel — would come out against the Nativity scene in Pawtucket, in support of the ACLU's (American Civil Liberties Union's) actions.

I regret that every Christian in America would not rise up against them and let us see victory in every situation over the ACLU in their activities. They are quite evidently set for the overthrow of our government, for the overthrow of Christianity, and for the overthrow of Judaism.

I believe that this nation was founded upon Jesus Christ as was evidenced through the Constitution of the U.S. which was derived from a prayer meeting of our forefathers. Nowhere in the Constitution does it state that there is to be a guarantee of separation of church and state or God and state. Anytime there has been a separation of God and state the state becomes the God, as is evidenced in Russia and other communist bloc nations.

Let it not be said that all Protestant churches agree with those very liberal, non-Christian ministers who would stand up with the ACLU. Trinity Assembly of God stands up and will be counted as one who will witness and serve Christ regardless of what all others may do. We support Mayor Lynch and the Nativity scene displayed next to the Pawtucket City Hall.

John A. Cooper
Pastor
Trinity Assembly
of God

Providence

PROV. JOURNAL 1/9/81

The Evening Bulletin, Wednesday, January 7, 1981

Letters

Did the ACLU go far enough?

Pawtucket Mayor Dennis M. Lynch has a perfect opportunity to emerge as a person of unprecedented, fine character, dedicated to the execution of those duties implicit in the nature of his high office. Instead he has chosen the role of stubborn protagonist of a popular, but unconstitutional principle.

In support of his stand, he offers nostalgia and precedent. Nostalgia is no justification for the imposition of one's will upon another. Precedent must be inspected constantly, reviewed, and revised if necessary.

The Pawtucket residents who have rallied to his support should earnestly ask themselves not "Has the ACLU gone too far?" Rather, have they, themselves, gone far enough? Have they really investigated the issue of separation of church and state?

While this predominantly Christian nation has come to accept the all-pervasive celebration of Christmas, with the Christmas tree and other non-religious decorations, the creche is a distinctly religious symbol, and, as such, should not be displayed in public places.

No one seeks to deny anyone the privilege of displaying in his home or church anything he wishes. Public, tax-supported institutions must, however, be representative of all members of a community, of whatever beliefs. Those hallowed halls may be decked with wreaths of holly, but never with religious symbols. I am equally opposed to the display of the Menorah in public places.

The world is composed of more than Christians and Jews, and such public displays are in poor taste. Two wrongs do not make a right. It would be gratifying to know that in Pawtucket, in the office of mayor there is a person of sensitivity, with a sense of justice, who would realize that the display of religious symbols in public buildings represents a travesty of justice and a public affront to the feelings of many constituents.

Gratefully, this is a country that will not tolerate religious persecution. The ACLU (American Civil Liberties Union) is to be commended and supported in its stand. The *Journal* should be reprimanded for labeling the ACLU "grinches," implying sympathy for the Lynch position. Perhaps it is Mayor Lynch who is the real grinch!

Clare Bensusan

Cranston

THE EVENING TIMES (Pawtucket, R.I.) TUESDAY, JANUARY 6, 1981

'Any fool knows that...'

When we read "Some clergy back American Civil Liberties Union suit" (Evening Times, Dec. 23, 1980), we were completely appalled by clergy making such statements if they are fully aware and up-to-date that church and state are one in this new decade of the 80s. If they are not dedicated to God and Christ, are they secretly striving for communism?

We agree that Mayor Lynch is so right when he says: "They miss the point." If these apparently communist-led inspired religious leaders ever had the experience in being in Washington, D.C., Boston, Mass., or Bethlehem, and had seen the life size of the Nativity, they would realize this and not be such ignoramuses. This practice has been going on for several centuries, not only in the USA but in Europe as well. When the church sanctifies this occasion, you cannot separate the church from the state — any fool knows that!

Our agreement was confirmed when we read Revelation 21:1-9: The New Heaven, the New Earth, the New Jerusalem — "...Whoever wins the victory will receive this from me: I will be his God, and he will be my son. But cowards, traitors, perverts, murderers, the immoral, those who practice magic, those who worship idols, and all liars — the place for them is the lake burning with fire and sulfur, which is the second death. One of the seven angels who had the seven bowls full of the seven last plagues came to me and said, 'Come, and I will show you the Bride, the wife of the Lamb.'..."

In closing, we will pray for your souls — as you sure need it. —

Alice Brickach
Pawtucket

Journal 12/19/85

Lynch espies 'Scrooge' under tree

By BARBARA CARTON
Journal-Bulletin Staff Writer

PAWTUCKET — The set was great — the snowy banks of the Blackstone River, near the city's Christmas Nativity scene, the plastic reindeer, the peppermint-striped lampposts and the tall pine tree.

MAYOR LYNCH

The casting was good, too: Dennis Lynch as the angry mayor, standing on a podium with clenched fists, shouting into a microphone about freedom, patriotism and Christmas good will.

And the house was packed: Sixty municipal workers, including Finance Director Richard Mumford and police Cmdr. Theodore King, stomped their feet against the cold and shouted things like "We're with you, Dennis."

"I love ya, baby," Lynch shouted back.

It reminded one bystander of the Phil Donohue show, where Phil goes out into an adoring crowd with his microphone. But it was, in fact, an outdoor press conference, called yesterday by Lynch to protest a court suit filed Wednesday against the city by the American Civil Liberties Union. The suit charges that the Nativity scene and its accompanying outdoor Christmas music violate the Constitution.

When he first heard about the suit Tuesday afternoon, Lynch responded in the privacy of his City Hall office by calling the whole thing "ridiculous" and vowing to fight it.

* * *

YESTERDAY, the fight spilled out of City Hall. Lynch surfaced with his troops and numerous bystanders along the riverbank at the scene of the alleged crime, five feet from

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Lynch

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baby Jesus, the plastic reindeer and ti straw manger, which had been propped into a vertical position by four Kobo ice hockey sticks.

And at 1:30 p.m., the appointed time, Lynch stepped ceremoniously up to a small wooden platform in front of the manger. He faced the crowd, took up a microphone in one hand, apologized for being "a little bit emotional" and indicated that this time, the ACLU was going a bit far.

"What's next?" he said. "Are we going to take 'In God We Trust' off the coin?"

The crowd seemed sympathetic and Lynch warmed up pretty quickly.

He talked about Pawtucket tradition, childhood visits to the Nativity display when it was in Slater Park (the crowd clapped), and Christmas good will that transcends religious differences ("Isn't that what these statues really mean to everybody?")

Then he glanced offstage, to where a bearded Santa Claus in a red corduroy suit, imported for the occasion, stood waiting in the wings. Santa hopped on stage and Lynch put his right arm around him, drinking-buddy style.

"Let's sing a few Christmas carols," Lynch suggested to the crowd. "Nobody does what we do, baby."

After "We Wish You a Merry Christmas," Lynch suggested the group do "another one that apparently bothers people." The crowd launched into "Silent Night" and, then, "It Came Upon a Midnight Clear."

Lynch stepped off into the singing crowd with his microphone and wandered over to 11 students from the Baldwin elementary school, who stood to one side with their teacher, Mary Lou Catelli. He moved the microphone from student to student and then trained it on the teacher.

Songs finished, Lynch returned to the podium.

"Hey," he said to the smiling crowd when it settled down, "was that good?"

That was good.

"Hey," he said to nobody in particular, "you're great."

"You too, Dennis," somebody shouted out.

"I love ya, baby," Lynch responded.

"We're with you," someone else said.

* * *

LYNCH SAID afterward that he did not know when the lawsuit would be heard. The suit asks the court to issue an immediate temporary restraining order forcing Pawtucket officials to remove the display, which is owned by the city but is not on city land (It is in a park owned by Old Slater Mill). Named as defendants, besides Lynch and the city itself, were Finance Director Mumford and Parks and Recreation Director Guy Dufault.

Steve Brown, executive director of the ACLU's Rhode Island affiliate, said yesterday that he wished Mayor Lynch "would take his responsibilities under the Constitution a little more seriously." He also said, "I am sorry that the mayor doesn't recognize the constitutional obligations he is under to uphold the First Amendment. The principle of separation of church and state is a very important one and a Nativity scene display sponsored and paid for by the city can be extremely offensive to members of other faiths. The mayor and other city officials simply have no business getting involved in religious activities."

Said Lynch, to yesterday's riverbank crowd: "Every Christmas needs a Scrooge and the ACLU is the Scrooge this year."

And in this corner,

LYNCH

niddle. . .

for the city of Pawtucket, Mayor Edward

Good News: Mayor Lynch, what was your reactions to the ACLU not wanting the nativity scene to be exhibited?

Mayor Lynch: I had two reactions to it. The first time was the first year I was elected. Each year that I've been here, someone has stepped in successfully representing the ACLU and telling me that the nativity scene in the office and outside display should be removed. I have normally refused each year. I told them this is a great, free society, and everyone has the right to sue and apparently you're going to have to take that direction, because I refuse to take it down. I went through that every year, and we've stood about it every year, this year they didn't come back however, they decided to sue. So, it didn't just happen this year. This also points out the long tradition of having a display of this type in this community.

Good News: They didn't want you to have the nativity scene in your office?

Mayor Lynch: Yes, that was told to me repeatedly, and I don't understand why that wasn't brought up this year. My first reaction quite honestly, when I heard about the suit, was great business, with all the important things we have to deal with and do we have to argue over a long standing tradition in a community, that no one has found offensive. But, quite to the contrary, has found it a spirit-lifting and a moral booster. The Christmas season is a very sad time for some people, and its a great time to help one another. This was our thought behind the nativity scene. I can trace this thing forty years-

Good News: It's been here an years ?!

Mayor Lynch: Oh yes, remember at years ago my parents taking me to Slater Park, where it was located until I became Mayor, and incidently 2/10 of 1% of our total area of Christmas display is devoted to the manger scene. Less than 1%, thats all the manger scene takes up, so that is not out sole purpose to have a nativity scene, I think there is some misunderstanding on the part of some people from the stories you would think the city of Pawtucket has a large nativity scene in the steps of city hall and that's it. We also have the carousel in Slater Park, Santa Clause is there, kids get a free ride, Christmas music playing and the children get little bags of candy. We play music here at the City Hall and the new mall downtown.

Good News: Did you get any complaints about the manger scene before the ACLU approached you?

Mayor Lynch: No. The only thing you that has been clearly demonstrated is the support and the good feeling that it has generated over the years, for instance, the Jewish community in Pawtucket was one of the first to rally to my defense and support. They do not consider it a religious service but, a matter of good will and good tradition. They publicly said this.

Good News: It appears that the good ole seeing demonstrations, is being violated.

Mayor Lynch: I think that is the nub of the question. How you think about this tradition, let us consider a couple of things. First, we are in a new year and we have consciously elected to mark our time through a calendar that dates from the birth of a man called Christ. That is how we mark our time. I do not find that offensive at all. Original.., that was a holy day, it has become a holiday celebrated by all people. I don't find that offending. I think what has happened is the undermining of the rights of all to freedom of expression. Do the people, of people have any rights? I think they do.

Good News: You said before that you were receiving quite a bit of support, have the local churches had any comments?

Mayor Lynch: Yes, a number of them state wide. This issue was blown up by the wire services and we got communications now from all over the country, from people who have read about this. I think the reason for this is that people recognize that this case could will be a precedent-setting one. No case has reached the supreme court of its own merits, this case apparently is one of those that could easily do that. Judge Pettine has been very critical though. I have no confidence in what Judge Pettine will do with this case, and no reason for saying that is the very way he has handled this. He put it off until January 21. He could have decided this before Christmas, I think that was a mistake to put it off, he'll probably put it off over longer than that to get back from Christmas season, which has put me at a loss to take to the ACLU, and get over the issue, or file a brief that or that his statement was over. It was released to the press without any contact to the city attorney. The suit brought against the city of Pawtucket said that it was taxpayers money, used for religious purposes or city owned land and we don't own our the land so, the suit was defective in that respect. Judge Pettine should have recognized that, we are or private property, owned by the Slater Mill Association, why is desecration and a waste of good city, has allowed us or their land to put up this display for all the people. So, we are not on city owned property, it is a very interesting point that we still try to have again in court.

Good News: Who owns the manger scene?

Mayor Lynch: We do, the taxpayers of the city of Pawtucket. This current manger scene is about 9 years old and in need of re-hamerization, and we are going to have an even a better looking one next year. We want to refurbish and expand our overall display because it's become so popular. People come from many communities to Pawtucket to see it.

Good News: If it came down to the point where it was determined that the city wasn't allowed to own it, would you still consider building structures to display a nativity scene?

Mayor Lynch: Its unbelievable, the reaction we have had from churches, businesses, and private individuals in the community that said they have a piece of land, we'll put it here or there. That is not the point. The point is that we believe in the tradition of historical fact, and reason has challenged we yet an another Christ was born that years ago. That is a matter of historical fact. That is the celebration that has resulted almost 2,000 years later in many communities.It is important for us to not back away from that, and talk about the fact that we will not censor historical facts. I find it rather amazing, if not amazing, that the ACLU could take a position where they are against censorship and decisively without exaggerating, they are seeking us to take a manger scene out, they are asking us to remove the person from his own birthday party, and change historical fact- that is censorship.

Good News: So, you are saying that the manger scene can also be reconsidering what is historically authentic?

Mayor Lynch: We historically authentic, fact, they haven't disputed the fact- that it is historically?

Good News: What is religious correlation or association with the scene, how do you respond idea that the manger scene viewed as a religious and the fact that the public in general, of different denominations different religions as in as part of the city are displaying it.

Mayor Lynch: Well, I have given part of the that right in your ear and that is the comment I have had come about years. Pawtucket Christmas without result in anything there building religious there not Judge Pettine I will be to tell the truth,we are nothing out the the SCE. After value of portals of the church SCE'S have disagreed Pettine and the entertainment probably have to be city claim earned to the We matter are are coming from or background religion, otherwise, it would be a that couldn't do so, of that display and not There is nobody forcing believe anything in our it's similar to Join a Protestant and sisters community or what are Jewish time of the expression of peace will

Good News: I interviewed ACLU recently and it as as far as the city a use of a manger scene, to be on public grove it is not, they would with the idea of saying is expression interfaith sentiment calling it appear as being you can't with another years other words you can along with Jewish but, use a display as where a display doesn't cause a display will expressing something.

Mayor Lynch: That is just as this suit is in fact, they are another religion by you are not allowed that I mean by the the constitution, where in do they ever say, on printed word, that we shall not have a wall that you shall not have of freedom of expression is all we are talking the community, where Bailey what that to be have been comfortable this freedom of and other people resent never seen Jewish as are over this issue, absolutely resent some to impose another religion on them and what the christian Some are even critics trying to foster a re we are not. That thing that the and their actions leads to

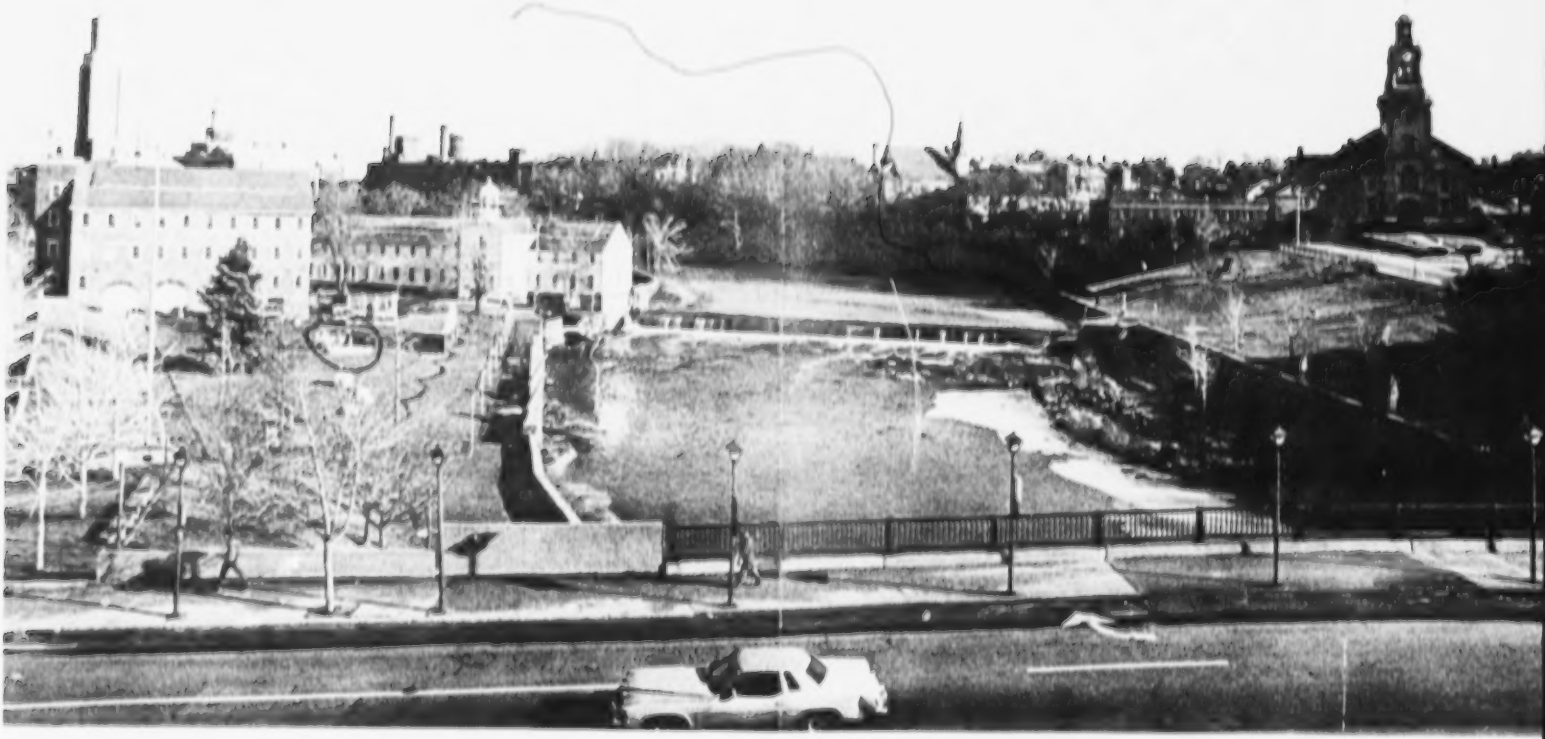
Good News: They, their actions as in presumption of the faith, secular humanis

Mayor Lynch: Right should not be Point people. We have to

DEFENDANT'S EXHIBIT B

DEFENDANT'S EXHIBIT C-1

DEFENDANT'S EXHIBIT C-2



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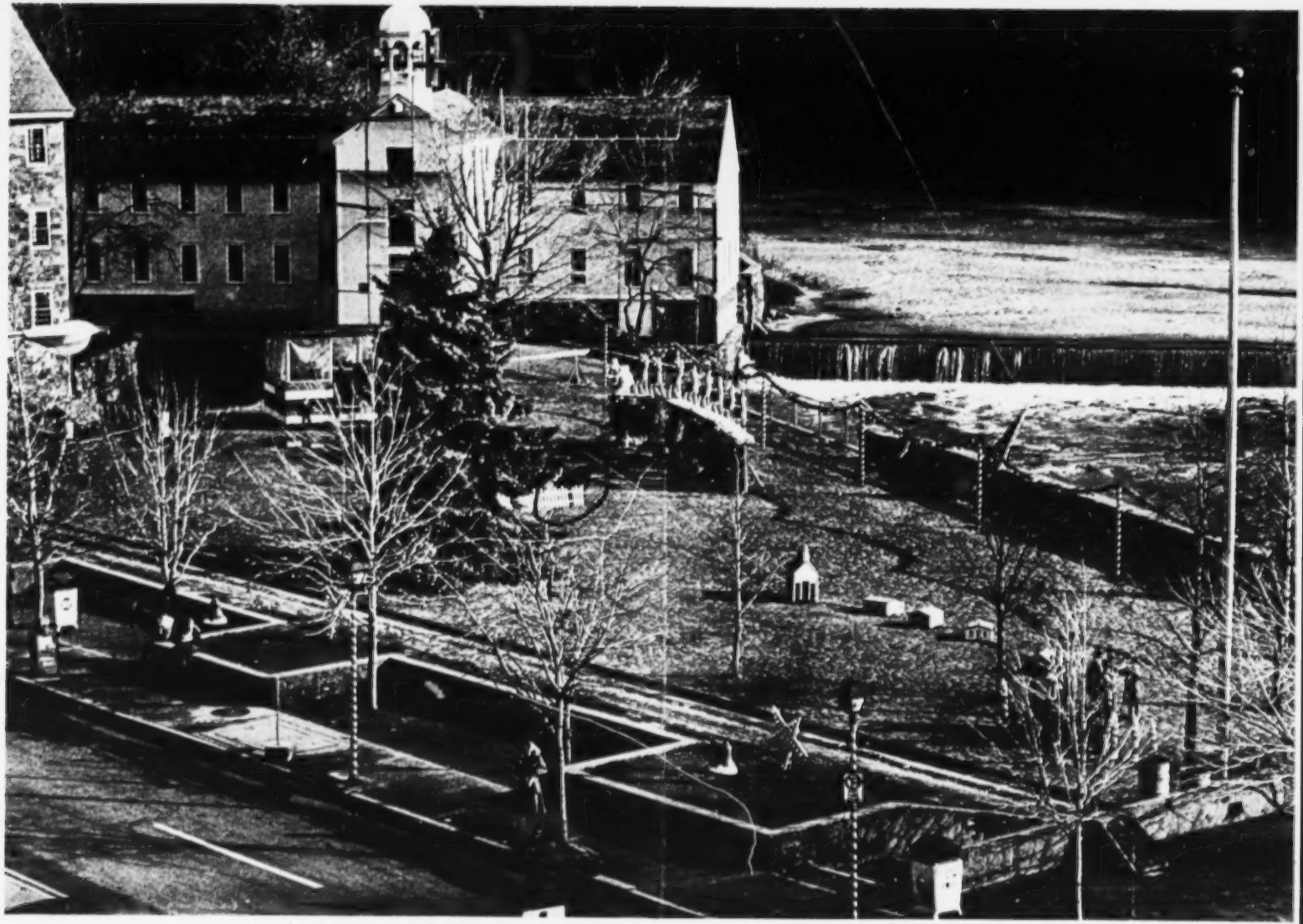

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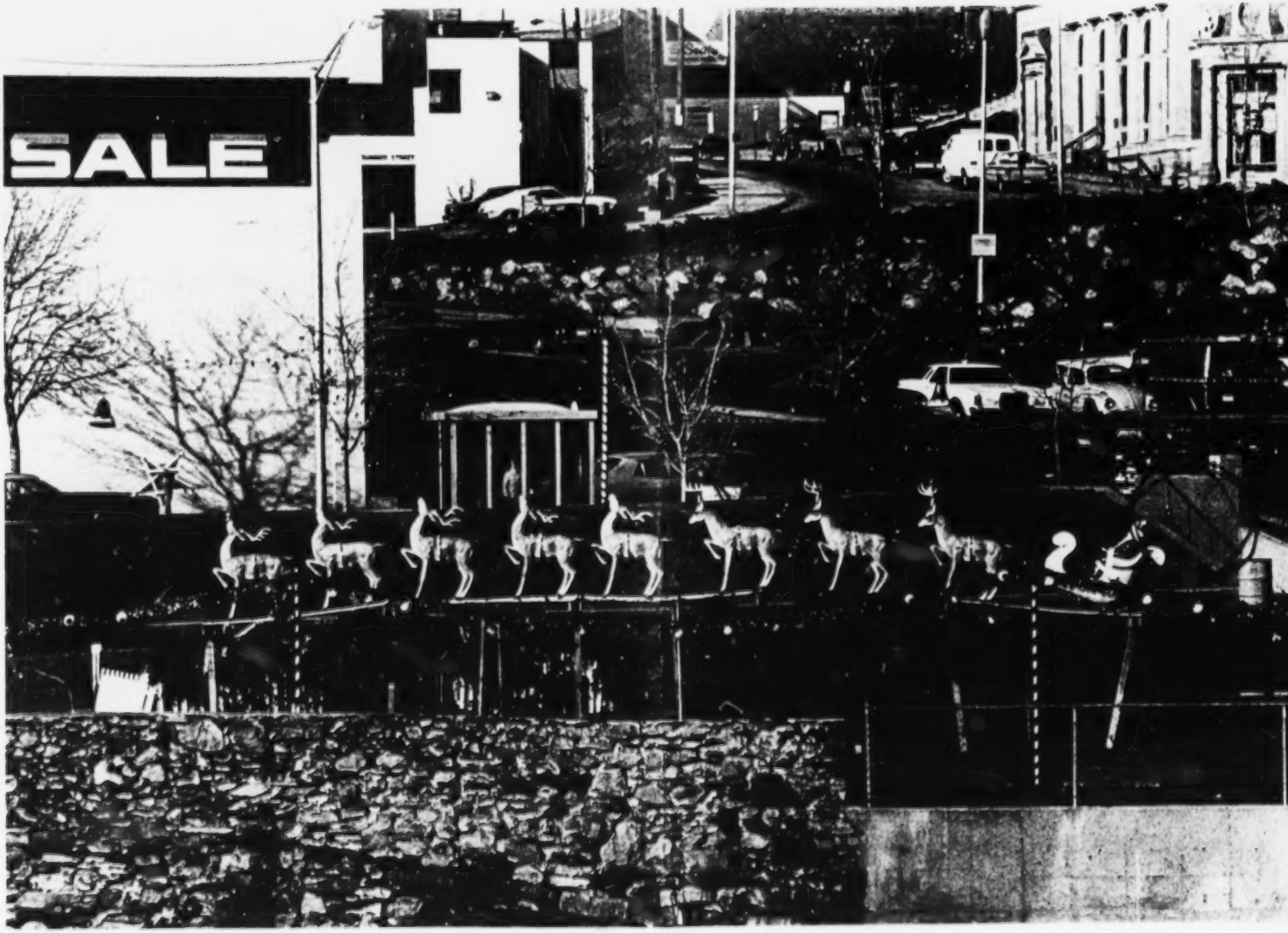

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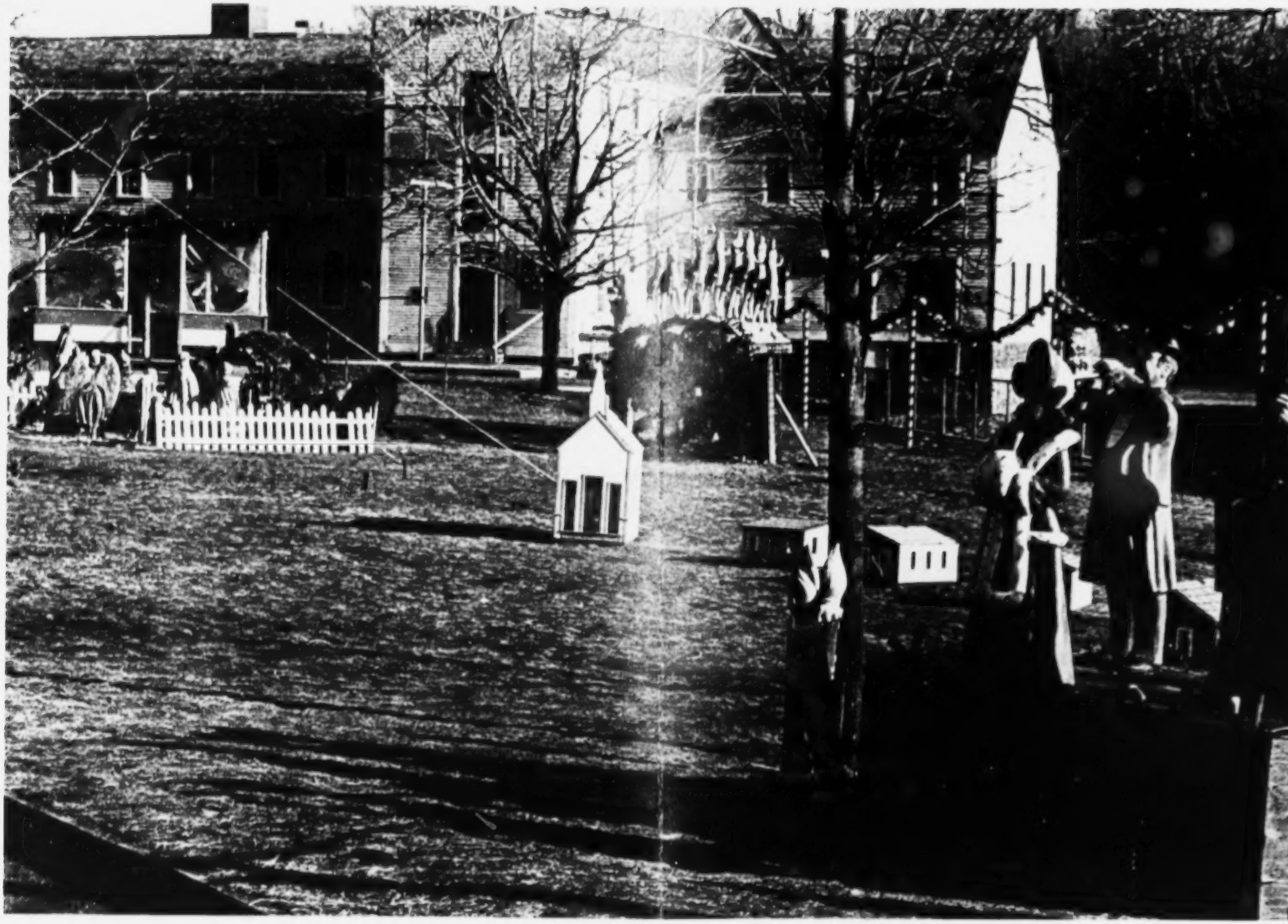

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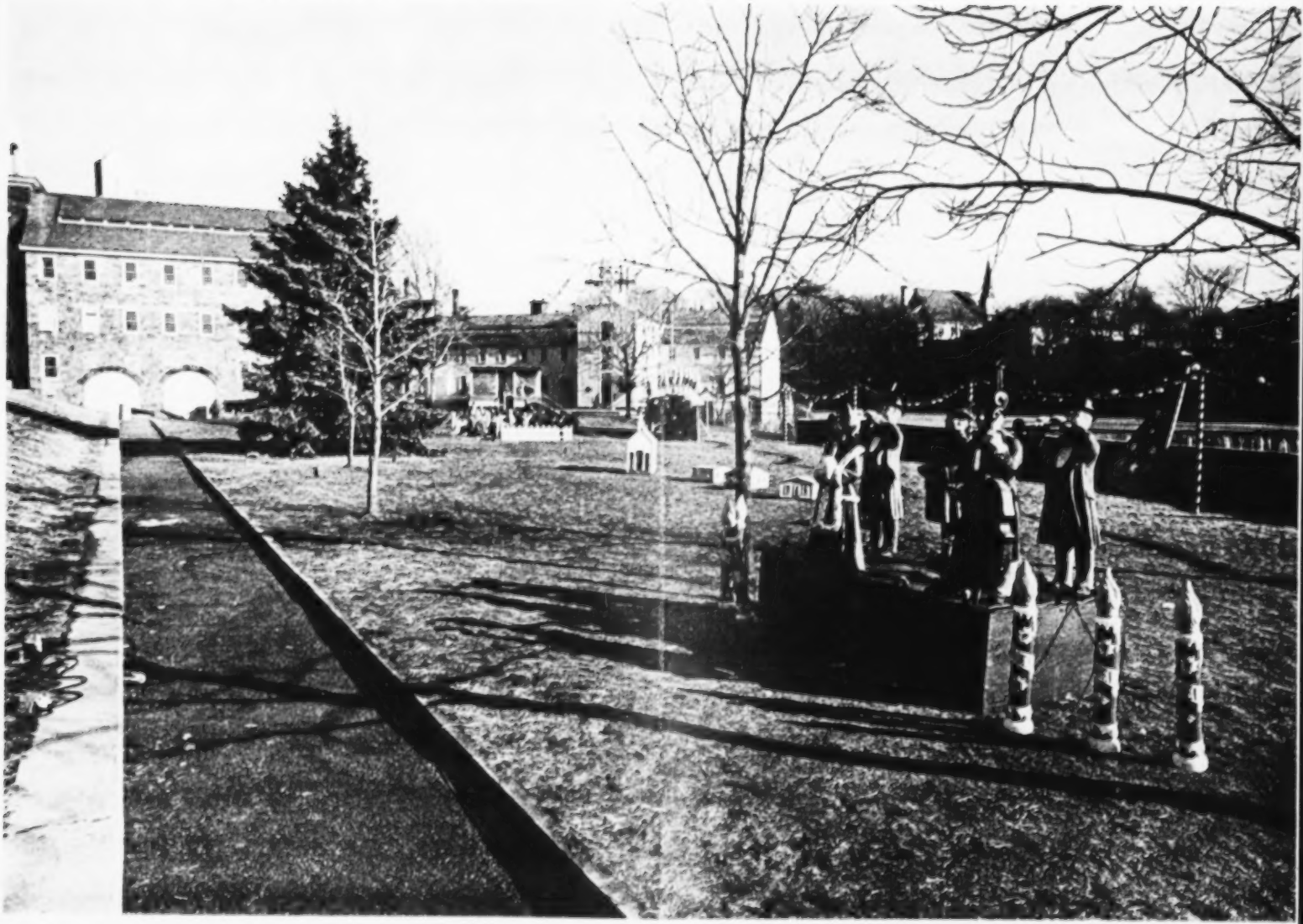

DEFENDANT'S EXHIBIT D